100th Congress
2d Session

COMMITTEE PRINT

S. Prt.
100-144, Vol. 2

A LEGISLATIVE HISTORY OF THE WATER QUALITY ACT OF 1987 (PUBLIC LAW 100-4) INCLUDING PUBLIC LAW 97-440; PUBLIC LAW 97-117; PUBLIC LAW 96-483; AND PUBLIC LAW 96-148

TOGETHER WITH

A SECTION-BY-SECTION INDEX

PREPARED BY THE

ENVIRONMENT AND NATURAL RESOURCES POLICY DIVISION

OF THE

CONGRESSIONAL RESEARCH SERVICE

OF THE

LIBRARY OF CONGRESS

Volume 2

NOVEMBER 1988

Printed for the use of the
Senate Committee on Environment and Public Works

U.S. GOVERNMENT PRINTING OFFICE
88-205 WASHINGTON : 1988

S322-5

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

88-205 O - 88 - 1

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

QUENTIN N. BURDICK, North Dakota, *Chairman*

DANIEL PATRICK MOYNIHAN, New York
GEORGE J. MITCHELL, Maine
MAX BAUCUS, Montana
FRANK R. LAUTENBERG, New Jersey
JOHN B. BREAUX, Louisiana
BARBARA A. MIKULSKI, Maryland
HARRY REID, Nevada
BOB GRAHAM, Florida

ROBERT T. STAFFORD, Vermont
JOHN H. CHAFEE, Rhode Island
ALAN K. SIMPSON, Wyoming
STEVEN SYMMS, Idaho
DAVE DURENBERGER, Minnesota
JOHN W. WARNER, Virginia
LARRY PRESSLER, South Dakota

PETER D. PROWITT, *Staff Director*
BAILEY GUARD, *Minority Staff Director*

CONTENTS

VOLUME 2

Page

Chapter III: Legislation in the 99th Congress 613

  President's Veto Message on S. 1128 615

  Senate Debate: October 1986 616

  House Debate: October 1986 657

  House Report (99-1004) 690

  House Debate: July 1985 874

  House Report (99-189) 1072

  H.R. 8, as reported, July 2, 1985 1177

  Senate Debate: June 1985 1290

  Senate Report (99-50) 1420

  S. 1128, as reported, May 14, 1985 1546

  Senate Hearings 1985--Administration Testimony 1642

Note: The section-by-section index may be found on page 2727, volume 4.

CHAPTER III

99TH CONGRESS

PRESIDENT'S 1986 VETO MESSAGE, NOVEMBER 1986; SENATE AND HOUSE DEBATE ON CONFERENCE REPORT TO ACCOMPANY S. 1128, OCTOBER 1986; CONFERENCE REPORT ON S. 1128 (*HOUSE REPORT NO. 99-1004*); HOUSE DEBATE AND PASSAGE OF H.R. 8, JULY 1985; HOUSE COMMITTEE REPORT ON H.R. 8 (*HOUSE REPORT NO. 99-189*); H.R. 8, AS REPORTED; SENATE DEBATE AND PASSAGE OF S. 1128, JUNE 1985; SENATE COMMITTEE REPORT ON S. 1128 (*SENATE REPORT NO. 99-50*); S. 1128, AS REPORTED; ADMINISTRATION TESTIMONY AT 1985 SENATE COMMITTEE HEARINGS.

Note: In 1985 the Senate and House turned early attention to Clean Water Act issues considered but unresolved in the 98th Congress (see chapter IV). The Senate Environment and Public Works Committee approved and reported the Clean Water Act Amendments of 1985 (S. 1128) on May 14. The Senate passed the bill, with amendments, on June 13, 1985, by a 94-6 vote. The House Public Works and Transportation Committee approved and reported the Water Quality Renewal Act of 1985 (H.R. 8) on July 2. The House considered the bill and passed it, with amendments, on July 23, 1985, by a vote of 340-83. The conference report on S. 1128 passed the House October 15, 1986 (408-0) and passed the Senate October 16, 1986 (96-0). The 99th Congress adjourned October 18, and President Reagan disapproved the bill with a pocket veto on November 6, 1986.

WATER QUALITY ACT OF 1986 - VETO MESSAGE

Water Quality Act of 1986

Memorandum Withholding Approval of S. 1128. November 6, 1986

I am withholding my approval of S. 1128, the "Water Quality Act of 1986."

On March 26, 1985, Lee M. Thomas, Administrator of the Environmental Protection Agency, sent to the Congress a proposal to amend and reauthorize appropriations under the Clean Water Act. As that proposal demonstrated, this administration remains committed to the act's objectives, and I am proud that we can report remarkable progress in this massive national cleanup effort.

Unfortunately, this bill so far exceeds acceptable levels of intended budgetary commitments that I must withhold my approval. Central to my proposal of last year was the phasing out over a period of 4 years and the termination by 1990 of the huge sewage treatment grant program. With the backlog of needed treatment plants financed in major part by the Federal Government since 1972, it is now necessary for the Federal Government to reduce its expenditures and complete the transition from Federal to State and local responsibility. The Environmental Protection Agency has already spent $44 billion to assist municipalities in meeting a need that was estimated to be $18 billion when the program was established in 1972. My proposal would have extended another $6 billion to finish the projects that had been started with Federal funds.

Notwithstanding my recommendations, S. 1128 would authorize $18 billion, or triple the amount I requested for that grant program, expand the allowable uses of Federal funds, and continue Federal grants for another 9 years. By 1993, S. 1128 would increase outlays by as much as $10 billion over the projections in my 1987 budget and would reverse important reforms enacted in 1981 that targeted funds to the completion of construction of sewage treatment plants—the program's original and principal remaining purpose.

S. 1128 makes several programmatic changes that would improve the overall Clean Water Act, including expanded Federal enforcement authorities and an easing of the regulatory and financial burden on cities in dealing with stormwater discharges. We will work diligently with the 100th Congress to address these concerns. S. 1128 also would authorize some new programs—at a 5-year total of $500 million—that my administration has strongly opposed. Principal among them is the reinstatement of a Federal financial assistance program to pay for local plans to control diffuse sources of pollution. Over $500 million was spent on a similar program between 1973 and 1981, with little or no positive result. Restarting expensive planning grant programs that have failed in the past is not justifiable.

For these reasons, I cannot approve S. 1128. I must emphasize, however, that my action will have no impact on the current conduct of water pollution control programs under the Clean Water Act. All regulatory, enforcement, and permit issuance activities will continue under permanent law. Although authorization to appropriate for the sewage treatment grant program and other grant and research programs expired between 1983 and 1985, funds have been appropriated for them annually, and they are funded in the continuing resolution for 1987.

My administration will work closely with the next Congress to pass acceptable legislation. We will continue our commitment to improve and protect our nation's water quality by working with the Congress to modify current law to help cities handle stormwater discharge permits.

Ronald Reagan

The White House,
November 6, 1986.

SENATE DEBATE ON CONFERENCE REPORT TO ACCOMPANY S. 1128

October 16, 1986
(Congressional Record, vol. 132, daily ed., S16424-S16611)

WATER QUALITY ACT OF 1986—CONFERENCE REPORT

Mr. STAFFORD. Mr. President, we are waiting momentarily for the Democratic leader to come in the room, although I believe he is aware of our intention to go ahead with the Clean Water Act amendments conference report.

Mr. President, without actually turning to the conference report, I will say that last evening the House passed the conference report, which in my view is excellent legislation, by, I believe, a unanimous vote. There were over 400 votes in favor of the conference report and none in opposition to it. At the proper time, after we have called up the conference report, I will yield to my colleague, Senator CHAFEE, who has been the chairman of the Environment and Public Works Subcommittee which handled this legislation and who has been instrumental not only as a leader in environmental issues but instrumental in his subcommittee, in the full committee, and in the conference between the House and the Senate in developing the legislation which has resulted in the conference report that passed the House unanimously with over 400 votes last night, and I hope will pass with an equally resounding majority in the Senate.

Mr. President, I now ask that the Senate proceed to the consideration of the conference report to accompany S. 1128, the Clean Water Act amendments.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

> The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1128) to amend the Clean Water Act, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

Mr. STAFFORD. Mr. President, I would now propose a unanimous consent request that the bill be allotted 40 minutes for debate to be equally divided between the majority and the minority.

Mr. BENTSEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. I have conferred with my colleagues on the committee on the minority side. We find that a fair apportionment of time considering the pressures that we are under in the closing days of this Congress.

The PRESIDING OFFICER. Is there any objection? None is heard. The unanimous-consent request is granted.

Mr. STAFFORD. Mr. President, I rise in strong support of this bill. It represents over 4 years of hard work by the Congress, and it deserves the enthusiastic support of all my colleagues.

I especially want to acknowledge the leadership of my good friend from the State of Rhode Island, Senator CHAFEE, who served as floor manager of the Senate bill and leader of the Senate conferees. His tireless enthusiasm has been a major force in shaping the bill before us today. Senators BENTSEN and MITCHELL and other members of the Committee on Environment and Public Works have made extraordinary contributions as well.

Mr. President, this bill makes a number of needed improvements to the Clean Water Act.

It extends the Federal construction grants program and provides for an orderly transition to State revolving loan funds.

It establishes a new program for focusing regulatory attention on "toxic hot spots," where controls on toxic pollutants beyond those required by uniform best available technology requirements are needed to restore and protect water quality.

It narrows and restricts a number of loopholes, variances, modifications, and waivers in the Clean Water Act.

It generally prohibits "backsliding" in permit requirements.

It establishes a new program for managing nonpoint sources of pollution, such as polluted runoff from agricultural lands.

It establishes new requirements to prevent toxic contamination of sewage sludge.

And it establishes new programs to clean up estuaries and lakes.

Mr. President, I urge my colleagues to support this bill. There is no question that it makes needed revisions to the Clean Water Act and will improve the quality of our Nation's waters.

Mr. President, I will not take the time to provide an exhaustive description of this bill, but I do want to make a few remarks about parts of the bill that are particularly important.

Th conference substitute establishes a new subsection 402(o) for the purpose of limiting backsliding in permits. Backsliding occurs when the effluent limits in permits are relaxed for any reason. Relaxation of permit effluent limits is fundamentally contrary to the spirit and intent of the Federal Water Pollution Control Act, which is supposed to restore and maintain the chemical physical and biological integrity of the Nation's waters by reducing the amount of pollutants being discharged.

The new provision establishes a general rule that permit limits may not be relaxed, then presents several exceptions. These exceptions are intended to be narrow, and they must be narrowly construed consistent with the objective described above.

With respect to revised waste load allocations or other means of translating water quality standards into effluent limits, backsliding is allowed in only one instance. That instance arises when a State decides to take a portion of allocated waste load away from one facility and give it to another. The recipient facility in this case would be entitled to a revised permit allowing an increase in discharge of the pollutant for which the load is being reallocated. This transfer can take place only if there is a net reduction in the amount of the pollutant in question. Of course, the recipient facility still cannot discharge more of the pollutant than is allowed by effluent limitations guidelines or water quality standards.

Mr. President, I want to be explicit about types of backsliding that definitely are not allowed by this exception. If a facility reduces its discharge of a pollutant because of permit requirements, a process change, decrease in production level, or even closing the facility altogether, other dischargers may not increase their discharges in response. Putting it simply, a polluter is not allowed to increase his amount of pollution because another polluter is reducing his. For another example, suppose the new nonpoint source program works as it should and as a result the level of, say, nitrate pollution in a river decreases. A downstream point source may not obtain a weaker permit with respect to nitrate, even if he could discharge more nitrate without violating water quality standards.

Mr. President, the key to understanding this issue is to recognize the difference between water quality and water quality standards. Water quality is measured by the level of pollution in a water body. A water quality standard defines a particular level of pollution that is the maximum allowable in a water body.

If one polluter discharges less, water quality improves. If another discharger discharges correspondingly more, that improvement is lost, although the water quality standard still is being met. The objective of the act is restore and maintain the integrity of the Nation's waters. That objective cannot be reached if water quality gains achieved on the one hand are yielded back on the other. If acutal water quality improves for any reason, such as the examples given above, that gain must be captured. The improved level of water quality defines the water quality that is subject to the antidegradation policy of the act. Thus, water quality that is higher than the minimum level of quality needed to meet a water quality standard is protected from degradation.

Mr. President, stormwater runoff from urban areas contains large volumes of toxic materials and other pollutants. Since 1972, municipal separate storm sewers have been subject to the point source permit requirements of the Clean Water Act. However, EPA only recently began to develop a permit program for these sources. The conference substitute contains a provision that is intended to establish a transition period for promulgating rules for regulating municipal separate storm sewers.

The conference substitute differs from the provisions in the House and Senate bills. The conferees discussed the issue at considerable length, and both bodies offered written proposals. The provision that was adopted by the conferees is the one offered by the Senate conferees, with modifications respecting the sizes of cities affected and the scheduling of requirements requested by the House.

I would like to note the important contribution to the resolution of this issue made by my good friend and colleague, the Senator from Minnesota, Senator DURENBERGER. It was he who proposed the idea of phasing in the program, as a refinement to the Senate proposal.

This provision gives EPA and the States a schedule for devloping permit program regulations. Generally, it focuses first on the larger storm sewer systems—those serving more than 250,000 people. All permits for these systems must be issued within 4 years of enactment. Then systems serving more than 100,000 persons must be permitted. Finally, after October 1, 1992, EPA and the States must issue permits for the remaining municipal separate storm sewer systems.

Mr. President, I would like to explain to my colleagues why a little more time is needed to develop a comprehensive municipal storm sewer program. These permits will not necessarily be like industrial discharge permits. Often, an end-of-the-pipe treatment technology is not appropriate for this type of discharge. As an EPA official explained in a meeting of the conferees:

> These are not permits in the normal sense we expect them to be. These are actual programs. These are permits that go far beyond the normal permits we would issue for an industry because they in effect are programs for stormwater management that we would be writing into these permits.

As my colleagues know, I generally do not support willingly any delays in environmental programs, especially a program to control a source of toxic pollutants as important as this one is. EPA should have developed this program long ago. Unfortunately, it did not. The conference substitute provides a short grace period during which EPA and the States generally may not require permits for municipal separate storm sewers. However, even during this period EPA and the States must require permits when either determines that a storm sewer contributes to a violation of water quality standards or is a significant contributor of pollutants to waters of the United States.

Mr. President, there is one aspect of this provision that could cause confusion, and I would like to take this opportunity to clear it up. With respect to storm sewer discharges associated with industrial activity, new subparagraph 402(p)(2)(B) states that these sources are excepted from the provision that EPA and the States generally will not require permits for certain storm water systems. Moreover, paragraph 402(p)(3) explicitly states that these sources must meet all applicable requirements of sections 301 and 402. This includes the permit application requirements of section 402. In other words, the provisions of sections 301 and 402 of the act continue to apply without interruption, and storm sewers with discharges associated with industrial activities are subject to the enforcement provisions of the act if they do not have a section 402 permit.

The conference substitute also requires EPA to establish regulations regarding these sources and municipal separate storm sewers 2 years after enactment, requires applications no later than 3 years after enactment, and requires permit issuance no later than 4 years after enactment. These dates are outside dates. The schedule for promulgating regulations does not overcome the underlying statutory requirements of sections 301 and 402 respecting the need to have a permit. Congress expects the regulations for storm sewers associated with industrial activity to be published under the current schedule and to require permits for these sources as soon as possible.

Mr. President, I have undertaken this explanation out of concern that affected parties may argue that the schedule for promulgation of regulations indicates an intent on the part of Congress to defer permit requirements for storm sewers associated with industrial activities. This definitely is not the case. If that result had been intended, the conference substitute would not specify that these storm sewers must meet all applicable requirements of sections 301 and 402.

The conference substitute also establishes explicit but limited authority for the Administrator to issue "fundamentally different factors" variances to industrial dischargers. This FDF variance currently is not authorized explicitly by the act. The EPA created it administratively, and the Supreme Court subsequenly ruled that it had not acted illegally in doing so. The purpose of this provision is to provide explicit statutory authority for this variance, but at the same time to limit its availability.

Generally, the effluent limits required of a particular facility are based on nationally uniform effluent limitation guidelines for the industrial category or subcategory of which the facility is a member. If an industrial category is diverse, EPA is supposed to subcategorize industries appropriately, so that each subcategory contains similar facilities.

In establishing a category or subcategory, however, EPA usually does not examine every facility. Occasionally, a particular facility argues that it is "fundamentally different" from the other facilities in the category and that it should be able to negotiate individual effluent limits apart from those required for the category. This provision allows such modifications, but constrains their use in several ways.

The Administrator is to use this new authority sparingly. Generally, differences within an industry should be accommodated by creation of an appropriate subcategory. This provision should not be used in place of complete definition of subcategories within an industry.

In establishing an effluent limitations guideline under section 304, the Administrator is allowed to consider a number of factors. One is the cost of achieving the effluent reductions for the entire category. EPA must consider aggregate cost for the industry in order to determine the best available technology economically achievable by the entire industry. The national effluent limitations guideline, however, is not intended to account for the economic impact on an individual facility. As the conferees stated in 1972 when section 304(b) was enacted, EPA is to "make the determination of the economic impact of an effluent limitation on the basis of classes and categories of point sources, as distinguished from a plant-by-plant determination."

If a facility faces higher individual

cost than the industry average, that is a reflection of economic efficiency of the facility rather than the ability of the industry as a whole to meet the necessary pollution control costs. To establish individual effluent limits on the basis of plant-specific cost of compliance would be to vitiate the principle of industrywide minimum treatment levels.

For these reasons, Mr. President, the conferees agreed to adopt the Senate approach and exclude individual cost of compliance from the factors the Administrator may consider when deciding whether to grant an FDF variance to a particular facility. Although the act does not and should not provide a mechanism to modify the requirements of an effluent guideline on the basis of fundamentally different costs at an individual facility, section 301(c) of the act provides for modification of requirements in a case where such requirements are beyond the economic capability of the owner.

Section 301(c) does not allow the Administrator to modify treatment requirements based on a showing of fundamentally different costs to an individual facility, unless these costs are beyond the economic capability of the facility and, therefore, threaten its survival. In addition, section 301(c) is subject to section 301(l), which prohibits the Administrator from modifying any requirement as it applies to a toxic pollutant. This provision assures that toxic pollutants will be controlled, regardless of the economic capability of the discharger. The new authority for treatment modifications based on fundamentally different factors contained in the reported bill is not subject to section 301(l).

This provision does not, however, preclude the Administrator from considering the other factors enumerated in section 304(b), some of which may result in reduced cost to the facility.

The Administrator may not use the authority of this section to modify effluent standards pursuant to section 307(a)(2) of the act, the general prohibited discharge standard in 40 CFR sec. 403.5, or other requirements implementing such standards.

The Administrator's decision to promulgate or deny an alternative effluent limitation or standard under this subsection shall be subject to judicial review pursuant to section 509(b)(1) of the act.

The Administrator may not delegate the authority to grant FDF variances to any State or to regional EPA officials. It should be exercised only by the Administrator or the Assistant Administrator for Water.

Mr. President, I am pleased to note that the conference substitute includes a major new program to control runoff pollution from nonpoint sources.

Nonpoint sources contribute approximately 50 percent of the pollution entering our Nation's waters. Nonpoint pollution contains not only conventional pollutants, such as sediment, bacteria and oxygen-demanding materials, but also toxics like cadmium, arsenic, lead, and pesticides. The U.S. Department of Agriculture in a recently issued report estimates that nonpoint pollution costs this country in excess of $7 billion per year in environmental damage and repair, such as dredging channels and reservoirs.

A new section 319 establishes a program to begin the process of addressing this hitherto unregulated source of water degradation. While potentially far reaching in its scope and intent, the new nonpoint program, as a product of compromise, is not as strong as I would have wished for. For example, it does not contain a regulatory component. Instead, it gives States and persons who are responsible for nonpoint pollution considerable flexibility to determine the type of program that will be used.

I consider this nonpoint source pollution program to be only a first step in tackling the problem—a trial run, to see if allowing the States the option to develop a control program will indeed abate nonpoint source pollution across the Nation. I am sure Congress will monitor the results of this program closely as it progresses if this approach has been adequate to meet the task at hand.

Mr. President, the conference substitute contains many provisions that are taken from the Senate bill. These provisions were described at length in reports from the Committee on Environment and Public Works in this and the previous Congress, as well as my own floor statements on the subject during Senate consideration of bills to reauthorize and amend the Clean Water Act. An adequate legislative history exists regarding congressional intent behind these provisions, so I will not describe them further at this time.

Mr. President, industrial users dump millions of pounds of toxic pollutants into the sewerlines to publicly owned treatment works [POTW's] each year. Virtually all of the toxic metals which do not simply pass through the POTW collect in the POTW's sludge, as do many of the toxic organics. Hence, many POTW's report sludge contamination from industrial wastes.

This already serious environmental problem threatens to become even more serious in the near future. The extent of contaminated sludge is likely to increase as more POTW's employ secondary treatment. That is because secondary treatment generates five times the sludge produced by primary plants. In addition, the sludge at secondary plants is likely to collect more toxics in the POTW's waste stream. Also, in response to restrictions in the Resource Conservation and Recovery Act on land disposal of industrial wastes, some operators of industrial facilities may engage in illegal dumping of hazardous wastes into sewers, contrary to Congress' intent.

Contaminated sludge causes serious adverse environmental and economic effects. It prevents cities from using cheaper disposal or use options such as fertilizer or soil conditioner. If landfilled or land spread, contaminated sludge can leach toxics into ground water and drinking water supplies, or introduce toxics into the food chain. If incinerated, such sludge can contaminate the atmosphere, affecting the health of POTW workers and nearby residents.

Pretreatment by industrial users of sewers can dramatically improve sludge quality. For example, I understand that in Muncie, IN, the sludge concentration of chromium was reduced from 2,000 to 9.5 with pretreatment. That of copper went from 1,750 to 700; nickel from 8,500 to 150; and zinc from 5,800 to 2,700. Large reductions in toxic concentrations have also been reported in other cities. In fact, pretreatment is the principal means for reducing the toxicity of municipal sludge. Also, pretreatment assures that the cost of toxics removal is borne by the generators of the toxic materials. Industries that dump toxics into sewers are simply passing their treatment costs on to the town or city, and creating political headaches in the process.

Because the relative strength or weakness of pretreatment requirements directly affects the quality of municipal sludge, EPA must consider the impact of pretreatment requirements on municipal sludge at two stages: when setting pretreatment requirements in the first instance, and when approving the issuance of removal credits under section 307(b) because the latter reduce pretreatment requirements for industrial users. That is why Congress told EPA in the 1977 amendment to the Clean Water Act not to approve the issuance of removal credits unless the credits would not prevent sludge use or disposal in accordance with regulations issued under section 405 of the act. In other words, Congress intended the existence of sludge regulations, and compliance with those regulations, to be a precondition to the granting of removal credits.

Of course, Congress originally directed EPA to issue comprehensive regulations covering every sludge use and disposal method by 1978. If EPA had followed this schedule, it could approve municipal programs to issue removal credits without adversely affecting the environment.

EPA, however, utterly failed to heed this congressional directive. Although I am told that EPA has detected at least 76 toxic priority pollutants in POTW sludge, it has issued rules only for two pollutants: cadmium and PCB's—and only if these pollutants are landfilled or land spread. EPA has no limits whatsoever on the toxicity of marketed sewage sludge products, and no limits for the many other toxic pollutants in sewage sludge which is landfilled or land spread.

These skeletal rules do not even approximate compliance with section 405 of the act. Nor do they provide a basis for determining whether EPA may safety approve the issuance of removal credits for industrial users.

I therefore sponsored an amendment to the Senate bill which I am happy to say is incorporated in the conference substitute. This amendment has a twofold objective: First, it directs EPA to begin the long overdue task of promulgating sludge regulations under section 405 of the act. Second, it addresses the relationship between sludge rules and removal credits.

This provision deliberately retains the original 1978 deadline for issuing sludge rules pursuant to section 405. It also gives EPA additional deadlines which are merely intended to put EPA on a schedule to correct its failure to meet the 1978 promulgation deadline in section 405. The additional deadlines are not intended to excuse the agency from its failure to meet the original deadline, nor to eliminate any consequences which flow from the original deadline, such as the inability to issue removal credits until sludge rules are in place.

Thus, by August 31, 1987, EPA must identify those toxic pollutants which, on the basis of available information on their toxicity, persistence, concentration, mobility, or potential for exposure, may be present in sewage sludge in concentrations which may adversely affect public health or the environment. For each such pollutant, EPA must promulgate regulations specifying acceptable management practices for sewage sludge containing the pollutant. EPA's rules must also establish numerical limitations for each such pollutant. EPA's rules must protect public health and the environment with an ample margin of safety, and must take care to protect the health of individuals or populations which are at higher risk than the population as a whole.

EPA officials informed the Congress over 3 years ago that there were at that time sufficient data to regulate comprehensively approximately 20 of the most common toxic sludge pollutants. Congress expects EPA to regulate at least these 20 pollutants in the 1987 regulations.

By June 15, 1988, EPA must issue

similar regulations for all toxic pollutants which are not addressed by the 1987 regulations and which may be present in sewage sludge in concentrations which may adversely affect public health or the environment. These rules must meet the same criteria as the 1987 rules; that is, they must specify acceptable management practices, establish numerical limitations, protect public health and the environment with an ample margin of safety, and protect individuals and populations at higher risk than the population as a whole.

At least every 2 years, or more often if the data indicate, EPA must review its section 405 regulations for the purpose of identifying additional toxic pollutants which may be present in sewage sludge and must promulgate regulations for these additional pollutants. This requirement ensures that EPA's rules keep pace with developing technical knowledge and adequately protect health and the environment. It does not, however, excuse EPA from the need to issue comprehensive regulations on the schedule set forth in this bill.

Finally, the bill addresses the relationship between removal credits and sludge regulations. A recent court case, *NRDC v. EPA*, No. 84-3530 (3d Cir. 1986), correctly held that EPA could not approve the issuance of removal credits until the agency issued comprehensive sludge regulations under section 405 of the act. Yet notwithstanding the absence of 405 sludge rules, EPA has already approved the issuance of removal credits for 12 POTW's. Industrial users of these POTW's many have relied on EPA's approval in planning their pollution control systems. In addition, EPA has received removal credit applications from approximately 14 POTW's which also may have relied on EPA's removal credit rules in developing their programs.

The bill includes a provision to prevent temporary inequities with respect to these industrial users and POTW's. It stays that part of the court's decision which addresses section 405(d) of the act until August 31, 1987, for these approved or pending applications only. This will give EPA adequate time to correct its failure to issue the necessary sludge regulations. It will also allow these POTW's to grant removal credits, assuming they meet all other criteria for credits. It is important to note that the bill does not stay any other part of the court's decision. In other words, these 12 POTW's must meet the applicable parts of the court's decision on consistent removal, combined sewer overflows, and so forth to continue to grant credits. In addition, EPA must revise the permits for these POTW's to incorporate the sludge criteria required by subsection (d)(4). Likewise, EPA may approve the 14 pending removal credit applications under the same criteria and subject to the same permit conditions mandated by subsection (d)(4).

Interim removal credit authority for these 26 POTW's may not extend beyond August 31, 1987, nor may EPA approve applications for removal credit authority from any other POTW's or for any additional pollutants not covered by the approved or pending applications. This restriction is critical because any further expansion of removal credits or perpetuation of existing credits beyond August 31, 1987, may well exacerbate the adverse environmental consequences of EPA's failure to issue sludge regulations. In addition, EPA's sludge regulations may necessitate stricter pretreatment requirements at some POTW's, including the 26 which have applied for credits. Until EPA has published the comprehensive sludge regulations as required by section 405(d), as amended by the conference substitute, the Agency is prohibited from allowing any more cities to weaken pretreatment requirements for industrial users. Also, the Agency is prohibited from extending interim removal credits allowed by subsection 406(e) of the conference substitute beyond August 31, 1987.

The conference substitute addresses acid mine drainage as well as the discharge of iron and manganese from abandoned coal mines—those mines abandoned before enactment of the Surface Mining Reclamation and Control Act of 1977. Although this problem is largely confined to the Appalachian region of our country, it is a significant water quality problem in that area. Acid drainage and the flow of metals and soils from these abandoned workings cause severe water quality problems throughout Appalachia that persist long after mining has ceased, in some cases rendering entire watersheds biologically dead.

I am told that it is generally less costly to reopen an abandoned minesite than to open up a new area. However, both the Surface Mining and Clean Water Acts impose a best available technology requirement on new mine operations, and confusion has arisen as to whether that requirement applies when an operator reworks an area abandoned prior to enactment of the Surface Mining Act.

To clarify matters, the conference substitute provides that section 402 permits issued for preexisting discharges from remined areas contain binding specific numerical effluent limitations set on a case-by-case basis, with the permit writer using his best professional judgment as to what those limitations should be. This approach was intended to give the mine operator sufficient flexibility and thus incentive to rework these abandoned sites. However, water quality must not be degraded and State water quality standards must not be violated, either at remined site or in adjacent areas. Further, after the binding specific numerical limitations are set, an applicant for such a discharge permit must demonstrate, as a separate showing, to the satisfaction of EPA—or the State, where applicable—that the issuance of such a permit creates a "potential for" improvement to water quality. This means that EPA and the State must be satisfied based on a conviction that it is probably that there will be actual improvement in water quality as a result of the modified requirement. This determination must be based on a scientifically supported prediction, not mere speculation. Mere assertions unsupported by scientifically verifiable methods will not meet this standard. Such a factual showing is consistent with the goals of both the Surface Mining Act and the Clean Water Act that pollution to the Nation's waters not only be abated, but that the quality of the receiving waters be improved.

Mr. President, I am pleased to note that the conference substitute contains a provision that was placed in the Senate bill at the request of Senator MITCHELL and myself. I am referring to the new section 602(a)(4)(B), which allows a State to use its revolving loan fund for implementing its nonpoint source management under section 319. The State first must use funds directly made available by capitalization grants to assure maintenance of progress, as determined by the Governor, toward compliance with enforceable deadlines, goals, and requirements.

This flexibility afforded by this provision will be important to a largely rural State, such as my own State of Vermont. In my State, there may well be circumstances in which the State will decide that a loan to a dairy farmer for construction of a manure management facility, for example, may achieve a greater water quality gain than a loan for a publicly owned treatment works. The State may make such a loan when the Governor makes the determination described above.

I also am pleased to note that the conference substitute continues support for the national small flows clearinghouse located at the University of West Virginia. The clearinghouse assembles information on alternative sewage treatment technology for use in rural areas where conventional treatment systems are inappropriate. This is important for a highly rural State such as Vermont, where conventional systems sometimes are not the most cost-effective solution. The conference substitute is intended to provide a more reliable source of funding for the University of West Virginia clearinghouse. It is not intended that the designated funds be used by the Environmental Protection Agency in any other way.

Mr. President, this conference substitute contains a provision which is intended to reduce the paperwork and procedural burdens on log transfer facilities. The provision is essentially identical to the provision adopted on the Senate floor when the Senate considered S. 1128. That amendment was worked out between Senators STEVENS, MURKOWSKI, CHAFEE, and myself.

Some log transfer facilities in the State of Alaska have obtained permits from the Corps of Engineers under section 404 of the Clean Water Act for filling of navigable waters associated with construction of the facility. That is proper and indeed the issuance of such permits is the responsibility of the corps. However, the corps also wrote into the permits various conditions related to discharge of pollutants, such as tree bark, associated with the ongoing operation of the facility. The Clean Water Act does not authorize the corps to write permits for the discharge of pollutants other than dredged spoil and fill material and so absent legislative action, these facilities are in violation of sections 301 and 402 of the act.

The conference substitute excuses facilities that received a section 404 permit before October 22, 1985, from the need to apply for a permit under section 402. If the Administrator determines that the permit requirements regarding discharges of pollutants other than dredged or fill material meet the applicable requirements of the Clean Water Act, no subsequent section 402 application is required. If they do not meet the applicable requirements, however, the section 404 permit is to be modified by the Administrator to incorporate appropriate requirements.

This provision does not change current law with regard to the division of authority between the Secretary of the Army and the Administrator of the Environmental Protection Agency. An accurate description of current law was expressed in a letter to this Senator from EPA Administrator Lee Thomas on May 21, 1985. That letter was reprinted in the CONGRESSIONAL RECORD on June 13, 1985, in the context of Senate consideration of S. 1128. In corps-issued section 404 permits for log transfer facilities, permit limits for pollutants other than dredged or fill material are considered to be section 402 permit limits, whether written by the corps and approved by EPA or whether written into the permit by EPA as a modification.

□ 1150

Mr. STAFFORD. Mr. President, I reserve the remainder of my time.

I yield the floor.

Mr. BENTSEN. Mr. President, it is with a great sense of accomplishment that the committee brings forth this series of amendments, the product of 4 years of very hard work and a very long and arduous conference with the House of Representatives.

The distinguished chairman of this committee has been one who has approached this in a very bipartisan manner in trying to do what he tought was best for our country and it has been a pleasure to work with him in that regard.

The distinguished Senator from Maine [Mr. MITCHELL] has spent incredible hours in very productive work in bringing this about, reconciling some of the different points of view, and we owe a debt of gratitude to him. I am most appreciative of that.

Then I look at my good friend, the able Senator from Rhode Island. I think Senator JOHN CHAFEE has, with his good humor and his ability to cut through to the heart of the problem, and his sense of fairness, made a major contribution. I really do not believe it could have been accomplished on our side without the Senator from Rhode Island and the Senator from Maine taking such a productive role.

This legislation is an outstanding example of the ability to solve major and very complicated problems through bipartisan cooperation in pursuit of an important national goal.

The recognition of clean water as a high priority in our Nation was a moving force behind this agreement. The effort to clean up our Nation's waters has the overwhelming support of the American public, who throughout the history of this country have recognized the responsibility to our neighbors, our children and ourselves to correct abuses to this critical aspect of the environment.

Hearings before the Environment and Public Works Committee clearly prove that the Clean Water Act is paying off with a substantial reduction in pollutants. Our rivers are cleaner and our water quality has improved.

But this legislation also reflects the fact that there is still work to be done—and it includes major new efforts to continue on a steady and productive course.

It took many months to work out an acceptable agreement on construction grants, but I am pleased to report that the House and Senate are of one mind on the final figures. It would be regretable and, in my mind, contrary to the will of Congress and the American people for the administration to consider a challenge to this provision. My colleagues will recall that in 1981, the administration agreed to fund this grant program at a level of $2.4 billion per year for the 10 years needed to complete core needs for treatment works based on available needs survey data. Then, early last year, OMB proposed to phase out the program by 1990, and to fund no new starts.

This legislation continues to shift the program to State and local governments, but it also recognizes that the OMB proposal to pull the rug out from under a national goal at a critical point of progress was too abrupt and poorly planned. The $18 billion authorization will support the construction grant and loan program through 1994, and it is a fair timetable. Under the grant program, it authorizes $2.4 billion for fiscal year 1986, for fiscal year 1987 and fiscal year 1988, and $1.2 billion each for fiscal year 1989 and fiscal year 1990. Under the revolving fund, $1.2 billion is authorized each year for fiscal year 1989 and fiscal year 1990, $2.4 billion for fiscal year 1991, $1.8 billion for fiscal year 1992, $1.2 billion for fiscal year 1993, and $600 million for fiscal year 1994. States are required to establish revolving loan programs and provide a 20 percent match for Federal funds. Equally important, the legislation sets up a more equitable allocation program, which more accurately reflects the needs of our growing States. During fiscal years 1987, 1988, 1989, and 1990, for example, my State of Texas will receive an increase of approximately $18 million annually over the current level. While this is still less than what the figure would be under an allocation based strictly on eligible needs, it is an acceptable step toward fairness. It is also a correction of an inadequacy in the current allocation formula that was known but unaccounted for in the 1981 legislation.

The construction grant program is an acknowledgement that we must work closely with the States to assure that the revolving fund mechanism is workable and to provide a period of transition to allow States with lengthy legislative cycles or difficult remaining needs to work out their problems. However, it will be the revolving loan program that will represent the real future of municipal wastewater treatment construction. Under this program States will be able to recycle these funds in perpetuity and can develop a planned approach for ongoing and changing construction needs. I am pleased that the conferees agreed on provisions to allow substantial transfer of construction grant funds to the revolving loan fund in the first years. Fifty percent of fiscal year 1987 grant funds, 75 percent of fiscal year 1988 grant funds, and all of the fiscal year 1989 and fiscal year 1990 grant funds may be transferred into revolving loan funds. Additionally, the loan program is more flexible than the grant program; for example, reserve capacity—which is so essential to growing States such as Texas—can be funded under the loan program.

This legislation also includes a new permitting program to control industrial and municipal stormwater discharges. EPA will promulgate stormwater discharge regulations, and the initial cities to be regulated are those over 250,000 population, with cities over 100,000 to be regulated later.

There is also a growing national concern over nonpoint pollution, and provisions are included to authorize the States $400 million to develop and implement nonpoint source pollution management programs to manage such problems as polluted runoff from city streets and farmland. This type of pollution represents a major source of sediments, pesticides, nutrients, toxic heavy metals and bacteria, and almost every State has identified it as a significant contributor to existing water quality problems. At the same time, nonpoint pollution is a very different problem to solve than discharges from point sources. It is not easily subjected to a harsh regulatory solution. While there are some cities and States which have successfully implemented ordinances that manage nonpoint runoff from various operations like excavation, the issue is vastly different in most rural areas. Farmers and ranchers have long had a stewardship role in the land. Their lives depend on it. It is my view that no successful nonpoint program can be developed without the full involvement and support of these citizens. Land conservation is the original version of nonpoint protection. It is equally my view that a program which captures the minds and imagination of farmers and ranchers is one that will depend on their initial involvement in its creation. It will not be one developed in Washington and sent to the States for implementation. One of the key aspects of the nonpoint program included in this bill is its heavy reliance on nonregulatory approaches to nonpoint pollution problems. I am pleased to see a program which envisions a cooperative problem solving approach instead of the usual Federal control and compliance theory. Nonpoint pollution is a different problem; it warrants a new solution.

Another provision of particular interest to my State provides for partial delegation of the permit program. Texas has been unable to obtain approval for the Texas program because the State divides wastewater permits between the Texas Department of Water Resources and the Texas Railroad Commission. The Railroad Commission, which regulates oil and gas operations, has only in recent years sought permit delegation. Under this provision, the Texas Department of Water Resources, which has a fine permit program, will be in position to gain Federal approval for its portion of the program.

The bill also allows establishment of management conferences to solve pollution problems in many of the Nation's major estuaries. The levels of water quality in some of these estuaries are alarming, and demand prompt action. Point and nonpoint sources of pollution have actually closed some of our Nation's greatest natural resources to shellfishing and swimming, and others are declining. Under this provision, the EPA will convene management conferences for up to 5 years to identify pollution sources, conduct research, and develop conservation and mangement plans.

The legislation lists several of these estuaries for priority consideration under the program, ranging from Long Island Sound and Narragansett Bay to Galveston Bay, in my State of Texas. Galveston Bay is the largest of the seven major estuarine systems in Texas, and studies in 1975 showed it was the spawning and nursery grounds for 80 percent of the total fishery products taken from the Texas Gulf Coast. If this percentage remains similar today, Galveston and adjacent bays were ultimately responsible for approximately 82 million pounds of commercial fishery products worth $142 million in the 1985 total commercial Texas catch. In all, the Galveston Bay system receives runoff from Texas cities and towns totalling more than 6.75 million population and receives discharges from some of the most critical and vibrant industrial operations in the Nation. There will always be conflicts among the competing needs of the users of Galveston Bay. It is my hope that these conferences will facilitate the planning necessary to assure that sound judgments are made with regard to the use of these important estuarine systems.

The conference agreement addresses several other policy matters. Among these is modification of the use of fundamentally different factors in the effluent guideline and permitting programs. Generally, these changes follow the basic Senate approach. However, we have made several pragmatic adjustments that should make these changes work better. In particular, a sound approach has been defined to deal with industrial operations in which situations are not readily resolvable through the guideline development process. For example, in oil and gas production operations, wastewater conditions can differ from well to well. Generally, this water is reinjected under the UIC provisions of the Safe Drinking Water Act. However, there are situations in which it must be discharged and the guideline development process is not able to consider these situations before they occur. Consequently, the conference agreement directs the EPA to approach these situations by first, temporarily suspending the guidelines with respect to such facilities, second issuing Best Professional Judgment permits for such sources, and third, subsequently revising the guidelines to reflect these new situations. This will allow the necessary sensible case-by-case considerations to be made in these appropriate circumstances.

Another provision of the fundamentally different factors agreement relates to four fertilier plants in Louisiana. The conference substitute excludes from the effluent guidelines under 40 CFR, part 418, these four facilities under section 306(c)(1). Paragraph (2) of that subsection requires that EPA expeditiously, but not later than 180 days after enactment, issue permits for these four facilities based on best professional judgment under section 402(a)(1)(B) of the act. If EPA decides, after the date of enactment, to promulgate new effluent limitation guidelines for the facilities subject to the provisions of section 306(c) of this bill, the BPJ permits will remain in effect until issuance of new permits under the new effluent guidelines. Otherwise, permitting for these four facilities will continue under section 402(a)(1)(B).

The bill extends deadlines for compliance with the statutory requirement for the implementation of controls to achieve best available technology economically achievable. The bill would largely track the Senate approach including a final deadline date for compliance. However, it is clear that there are some guidelines, including the guidelines for the very complicated chemical industry, which will not be completed in time for all the facilities to comply with this deadline. There is administrative discretion available to address this type of situation; it is in use now. The conferees fully anticipate that EPA will continue judicious and equitable use of its administrative discretion in these instances where failure to comply with the deadline is related to limitations in the development of the guidelines by EPA.

The conference substitute also contains a provision closely modeled on the Senate bill, prohibiting backsliding or the weakening of effluent limitations in permits based on best professional judgment or water quality standards. While this provision is well explained in the statement of managers, there is one aspect on which additional comment may be helpful. The conference substitute contains five exceptions to the general rule prohibiting the weakening of effluent limitation. There are two matters addressed in EPA's current regulations on this subject, however, that although not included in the statutory exceptions, may still have an effect on particular situations. In certain circumstances effluent limitations may be established on a net basis for particular dischargers. Such a permit should be examined as to whether any modification does indeed involve a weakening of effluent limitation. Also, permits are occasionally based on production levels. Such permits can be examined in a similar manner.

Mr. President, we can all be justly proud of the advancements toward clean, safe water over the past 10 years. This legislation—which has broad support among all interested parties, the Congress and the people—recognizes there is still more to do. It is sound legislation, targeted with care toward the goal of cleaning up once and for all our Nation's waters. I urge the support of my colleagues.

Mr. President, I now defer to my distinguished colleague, a very valued member of the committee, the Senator from Maine [Mr. MITCHELL] to make such comments as he desires and to take control of the time for our side.

Mr. MITCHELL. Mr. President, I join Senators CHAFEE, STAFFORD, BENTSEN, and others in support of the conference report on the amendments to the Clean Water Act. Senator STAFFORD and Senator BENTSEN have worked very hard and displayed great leadership in this area.

I want to express my appreciation to Senator CHAFEE for his leadership in developing this important legislation. Through all our deliberations in the Environment Committee and with House conferees, Senator CHAFEE pressed for legislation to provide the best possible protection for the rivers, lakes, and estuaries of the country. Thanks in large part to Senator CHAFEE's leadership, we have achieved this goal. Every American who cares about clean water—and I believe that includes every American—owes a debt of gratitude to Senator CHAFEE.

I am pleased to have had the opportunity to participate in the various phases of the development of this legislation as the ranking minority member of the Subcommittee on Environmental Pollution of the Environment Committee and a member of the House-Senate conference on this legislation.

The 1972 Clean Water Act set an ambitious goal for the country: "To restore the chemical, physical, and biological integrity of the Nation's waters." We have, in fact, made substantial progress in cleaning up polluted waters. But serious problems still remain. In the State of Maine, there is evidence of both the success of the pollution control programs established in the Clean Water Act and of the seriousness of remaining pollution problems.

The Androscoggin River, once 1 of the 10 most polluted rivers in the country, received a waste load equal to that generated by New York City and virtually every mile was unfit for swimming or fishing. Today, almost 70 percent of the river is cleaned up. While this is an impressive accomplishment, we must continue our efforts to clean up the remaining 30 percent of the river.

The Maine commercial shell fishing industry declined for many years because the discharge of untreated sewage forced the closing of some 20 square miles of harvesting areas. We have been able to reclaim some 6 square miles of clam flats, but 14 square miles remain closed. These flats have a potential harvest value of over $30 million a year and could contribute a substantial return on our continued investment in clean water.

The great majority of Maine's lakes are remarkably clean. But some 36,000 acres of lakes have had pollution problems. While cleanup is underway at about half these lakes about 15,000 acres need further attention.

Virtually every State in this country has similar success stories and faces similar water quality challenges.

Our experiences over the past decade are evidence that the basic design of the Clean Water Act is still sound. The legislation before us today will build on the framework established by the original Clean Water Act and expand the act to address emerging pollution problems and changing conditions.

I would like to address a number of the amendments to the act.

The legislation will result in a second-generation program to achieve greater control of toxic water pollutants. Under the current law EPA is required to establish uniform, minimum controls for toxic pollutants. There is no assurance, however, that these controls will result in a safe level for a particular water body. Although the current law provides general authority for further control, this legislation initiates a specific process designed to control these toxic substances.

The legislation requires States to identify waters that do not meet water quality standards due to the discharge of toxic pollutants; to adopt numerical criteria for the pollutants in such waters; and to establish effluent limitations for individual discharges to such water bodies. This provision is an important addition to our ability to protect water quality and public health from increasing amounts of toxic chemicals.

The amendments also provide for new authority for modifying control requirements for industrial facilities which are fundamentally different from other facilities in an industrial class. This provision is complicated and I would like to provide a detailed description of the provision and its objectives.

The Clean Water Act provides for the development of minimum, national, technology-based treatment requirements for industrial dischargers. These requirements address a range of industrial categories and include effluent guidelines applying to direct dischargers and pretreatment categorical standards applying to indirect dischargers.

The amendments provide the EPA Administrator with new authority to modify a minimum, national treatment requirements for an individual facility within an industry if the facility is found to be fundamentally different from other facilities within the industry on the basis of certain factors considered by the Administrator in establishing the guidelines or standards.

The new provision provides that a facility may be found to be fundamentally different based on factors identified in sections 304 (b) and (g). These factors include the age of equipment and facilities, the process employed, the engineering aspects of the types of control techniques, process changes, and other factors deemed appropriate by the Administrator.

The Clean Water Act currently provides for establishment of minimum, national technology-based requirements on an industry-wide basis but does not allow modification of requirements on a plant-by-plant basis. The Administrator has been able to accommodate variation in an industry through development of different requirements for subcategories of an industry.

In addition, the Agency developed and implemented a procedure for establishing alternative treatment requirements for individual facilities based on a conclusion that the facility is fundamentally different from the industry. These regulations were recently upheld by the Supreme Court. While there is currently no basis for the regulations in the act, the conferees concluded that some expansion of the Administrator's authority in this area is an appropriate addition to the act.

This new provision provides a clearly defined and limited authority in the statute for modification of treatment requirements for individual facilities. The provision is intended to assist the Administrator in addressing variation in development and effective administration of the national effluent guidelines and standards.

The conferees intend, however, that the Administrator use the new authority in this section sparingly. Applications under this section should be assessed with the objective of accounting for unique situations encountered in implementing national, minimum treatment requirements. Unless the circumstances of a facility are unique, the Agency should accommodate fundamental differences among facilities through the establishment of subcategories within an effluent guideline. This section should not be used in place of complete definition and subcategorization of an industry.

The conferees recognize that this section will require the EPA Administrator to make difficult decisions with regard to the magnitude of differences among similar facilities within an industry. In exercising this judgment, the Administrator should place high priority on the principle that all industries within a category or subcategory are to meet national, minimum, treatment requirements. The authority of this section is intended only to provide the Administrator with the authority needed to implement this aspect of the statute effectively and should not be used to generally relax or retreat from national, minimum requirements for an industry.

This new provision places several important limits on this new authority. These limits concern consideration of costs to a facility and procedural and other limitations.

The bill specifically excludes consideration of costs as a basis for establishing a fundamental difference with regard to an individual facility. Section 304 of the Clean Water Act authorizes the EPA to consider the cost of achieving effluent reductions, in addition to other factors, in development of a guideline for an entire industry. The EPA needs to consider cost when developing a guideline for an industry in order to determine the best available technology for water pollution control which is economically achievable for an entire industry.

Individual facilities, however, may face costs which are higher than costs to the majority of other facilities in an industry. A facility might find that differences in costs cause it to be fundamentally different from other facilities and contend that these differences justify modified treatment requirements. For example, costs of labor, transport or materials might be presented as fundamentally different.

While a guideline is intended to account for economic impact on an entire industry, it is not intended to account for the economic impact on each individual facility. The 1972 Clean Water Act conference report stressed this point, directing EPA to "make the determination of the economic impact of an effluent limitation on the basis of classes and categories of point sources, as distinguished from a plant-by-plant determination."

If a facility facing higher costs than the overall industry is allowed to reduce treatment levels below the minimum level, the degree of pollution control at a facility is linked to the economic efficiency of the facility, rather than the economic ability of the industry, and the principle of an industry-wide minimum level of treatment loses its meaning.

Although the act does not and should not provide a mechanism to modify the requirements of an effluent guideline on the basis of fundamentally different costs at an individual facility, section 301(c) of the act provides for modification of requirements in a case where such requirements are beyond the economic capability of the owner. Section 301(c) does not allow the Administrator to modify treatment requirements based on a showing of fundamentally different costs to an individual facility, unless these costs are beyond the economic capability of the facility and, therefore, threaten its survival.

In addition, section 301(c) is subject to section 301(1), which prohibits the Administrator from modifying any requirement as it applies to a toxic pollutant. This provision assures that toxic pollutants will be controlled, regardless of the economic capability of the discharger. The new authority for treatment modifications based on fundamentally different factors contained in the reported bill is not subject to section 301(1).

This provision is not intended to prohibit the EPA from modifying treatment requirements in a case where a fundamental difference in an aspect of a facility which is eligible for consideration—for example, age of facility, process employed—would result in a reduction in costs to a facility.

When such an eligible factor is under review, the EPA may consider the costs specifically associated with that factor, but must be able to justify a finding of a fundamental difference primarily on the basis of a substantive and technical assessment of eligible factors. The EPA shall not replace a substantive and technical assessment of eligible factors with a shortened cost test designed to indicate a fundamental difference—for example, when the costs of an eligible factor at an individual facility are twice the costs at average facilities, the factor is fundamentally different.

The reported bill specifies several procedural requirements and other limitations governing applications for modifications under this section.

Section (n)(1)(B) provides that an application be based solely on information and supporting data submitted to the Administrator during the development or revision of a guideline or on information the applicant did not have

a reasonable opportunity to submit during the rulemaking. The lack of a reasonable opportunity to submit information is based solely on a lack of actual or constructive notice of the rulemaking.

This provision will assure that effluent limitations and standards are as comprehensive as possible, and thereby reduce the need for applications under this subsection. This provision will also discourage withholding of information during the rulemaking process for subsequent use in an application for treatment modification under this subsection.

In addition, where the record is already closed and an applicant has new information to present bearing on the guideline or standard, the applicant continues to have the right to petition the Administrator to reopen the rulemaking and record and consider creation of a subcategory. The Administrator's disposition of such a petition is subject to judicial review under section 509(b) of the act.

Section (n)(1)(C) provides that the alternative requirement imposed on the applicant can be no less stringent than justified by the applicant's fundamental difference from the rest of the category or subcategory with respect to eligible factors.

Section (n)(1)(D) provides that any alternative requirement shall not result in a nonwater quality environmental impact which is markedly more adverse than the impact considered by the Administrator.

Section (n)(2) requires that an application under this section shall be submitted within 180 days after the publication of the initial guideline or standard. Section (n)(3) provides that an application shall be approved by final Agency action within 180 days after submission. For the purposes of this section, final Agency action means the administrative decision issued by the EPA, following public notice and comment, as appropriate and including a statement of the basis for the decision. Section (n)(4) states that the Administrator may allow the applicant to submit clarifications with regard to information submitted in an application prior to the 180-day decision deadline.

Section (n)(5) provides that an application for an alternative requirement based on fundamentally different factors which is pending on the date of enactment may be amended by the applicant within 180 days after such date of enactment. This provision is intended to allow applicants with pending applications developed under EPA regulations pertaining to fundamentally different factors to revise the applications to reflect the requirements of this new section of the statute.

Section 301(n)(6) provides that an application for an alternative requirement under this section shall not stay the facility's obligation to comply with the effluent limitation guideline or standard which is the subject of the application.

This provision is intended to prevent EPA or the State, or the POTW in the case of indirect discharge, from delaying issuance of the permit or pretreatment mechanism during the pendency of an application. If an application for an alternative requirement is denied by the Administrator, the applicant must comply with the limitation or standard as established or revised. This section is subject to section 301(b) and 309 as to compliance dates.

This section shall apply to existing primary and secondary national effluent limitations and categorical pretreatment standards for industrial categories, such categories as may be identified in the future, and to any revisions of guidelines or standards for such categories.

The Administrator may not use the authority of this section to modify effluent standards issued pursuant to section 307(a)(2) of this act, the general prohibited discharge standard in 40 CFR sec. 403.5, or other requirements implementing such standards.

The owner or operator of a facility has the burden of proving to the satisfaction of the Administrator that the facility is eligible for an alternative requirement under this section. The Administrator's decision to promulgate or deny an alternative effluent limitation or standard under this subsection shall be subject to judicial review pursuant to section 509(b)(1) of the act.

This new authority is intended to provide for modifications of requirements for conventional, nonconventional, and toxic pollutants. Consistent with this objective, section 301(l) of the Act, which excludes toxic pollutants from modifications under this act, is amended to allow modifications under this section for toxic pollutants. This amendment to section 301(l) does not in any way weaken the application of the section to modifications of the act than provided under this subsection—301(n).

The Administrator may not delegate the authority provided by this subsection to any State. In addition, it is our intention that the authority of this section be exercised only by the Administrator or Assistant Administrator for Water, rather than regional or other officials. The Administrator shall obtain the concurrence of a State before approving any alternative requirements under this subsection.

All of these provisions are to be self-implementing and are to take effect upon enactment of the Clean Water Act Amendments of 1985. The Administrator is encouraged to amend the appropriate regulations to make them consistent with these requirements; however, the failure of the Administrator to make such revisions will not affect the implementation of these provisions.

A related provision provides new authority for the EPA to collect fees for the processing of various modifications of permits and other requirements.

Substantial Federal resources are being devoted to processing applications for modifications authorized by the Clean Water Act. Section 301(o) of the reported bill requires the Administrator to establish a system of fees to recover costs of reviewing and processing these applications. Applications, including resubmitted applications, are to be accompanied by an appropriate fee, as determined by the Administrator. The Administrator may develop a tiered or sliding scale fee structure so long as the aggregate amount of fees collected reflects the Federal resources actually expended in processing such applications.

Fees collected under this section shall be deposited into a special fund in the U.S. Treasury entitled "Water Permits and Other Services." Such funds are to be available for appropriation and to remain available until expended and are to be used to carry out the Agency activity for which the fee was charged. Creation of this special fund will assure that fees charged for processing of applications will be used to support water permit related activities, rather than other activities. The existence of this fund shall not be a basis for reductions in funding levels for related program activities.

EPA recently estimated that as much as half the remaining water pollution problems result from nonpoint sources. Controlling nonpoint pollution, however, has proven to be an extremely difficult, intractable problem.

This legislation includes a major amendment providing for State programs to identify and control nonpoint source pollution. States will identify waters affected by nonpoint sources of pollution and develop programs to implement best management practices for controlling this pollution. State programs will include a schedule for implementation and will be coordinated with related Federal projects. A total of $400 million is authorized over 4 years to support this important program.

It is the intention of the conferees that grants to States be used to implement nonpoint management plans developed under this section. Grants are not intended to be used to support the development of such programs or plans. The conferees expect that States will use State resources to develop nonpoint plans and programs. States may also use funds available under a new section 205(j) of the act to develop such plans, and once plans are approved, assist in the implementation of plans.

In using grant funds under this section for the implementation of approved programs or plans, States are not to provide assistance to individuals for construction of pollution control facilities unless such assistance is in the form of a demonstration program, as determined by the Administrator. State's may include other Federal assistance programs, including programs of the Department of Agriculture involving grant and loan assistance and cost sharing, in overall programs for control of nonpoint pollution.

States may use funds available in the new State revolving loan funds for the implementation of nonpoint programs developed under this section. Loan funds must be used in a manner consistent with all the provisions of title VI of this act.

For example, once a State has assured progress toward compliance with the deadline for construction of secondary treatment facilities, the State may make loans or provide otherwise eligible assistance to nonpoint pollution-related projects.

Such loan or other assistance may be made to individuals or organizations, as well as municipalities and other governmental units. For example, a State may provide a loan to a farmer to construct a manure storage facility if such facilities are called for in the approved State nonpoint pollution control program. A State might also provide assistance to a municipality to implement programs to control urban runoff.

Among the most significant issues addressed in this reauthorization of the Clean Water Act is the financing of wastewater treatment plant construction. This aspect of the reauthorization bill is important because it provides State and local governments with a clear statement of future Federal involvement in treatment plant financing and allows them to finalize plans to meet the compliance deadlines established in the law.

The act provides for a transition from the current grant program to a program providing Federal support for State revolving loan funds. The bill provides for an authorization of a total of $18 billion over the next 9 years to assist municipalities with these construction projects. Establishment of loan funds will complete the process of transfer to State control of the Municipal Treatment Construction Program.

The State revolving loan fund is important for the future financing of pollution control projects. It is a complicated provision and I would like to describe the intentions and objectives of the conferees.

The provision provides that the Administrator and States may enter into capitalization grant agreements under this title. States must agree to accept payments under a schedule to be developed jointly with the Administrator, must agree to provide a 20-percent match of Federal funds, and must agree to make binding commitments for assistance in an amount equal to 120 percent of the amount of the grant payment within 1 year. Moneys contributed by a State to match Federal capitalization grants under section 602(b)(2) are to be cash and not in kind.

The schedule under which payments are to be made by the Administrator to the State shall be developed jointly by the State and the Administrator. Such schedule shall be based on the State intended-use plan and shall provide that payments be made as expeditiously as possible, consistent with such plan. At a minimum, payments shall be made not later than the earlier of 8 quarters after the date funds were obligated by the State or 12 quarters after the date such funds were allotted to the State.

In addition, the State must agree to assure, as part of the intended-use plan submitted annually, that all Federal and State funds provided to the SRF will be committed in an expeditious and timely manner. This provision reinforces the requirement that States make binding commitments for funds within 1 year of any given payment to the fund.

Subsection 602(b)(5) refers to all Federal funds, in the form of capitalization grants, and all other funds in the SRF as a result of those capitalization grants, including repayments of loans originating from those grants and State funds contributed as the required match for those grants, and funds deposited in the fund under 205(m).

The State must use these funds first to assure maintenance of progress toward compliance with the enforceable deadlines, goals, and requirements of this act, including the municipal compliance deadline of July 1, 1988, or are on enforceable schedules of compliance after that date.

Progress toward compliance with enforceable deadlines, goals, and requirements of the act, in the case of treatment works that are not voluntarily on a schedule to achieve compliance, may be assured through a funding commitment or through establishment of an enforceable compliance schedule.

Thus, the requirement of subsection 602(b)(5) is met if treatment works in a State are on an enforceable schedule to achieve compliance with uniform secondary treatment requirements of the act, whether or not there is a commitment to fund such treatment works from a State revolving loan fund or with a grant under title II of this act. Governors of each State shall make the determination of progress toward compliance required under this subsection and the Administrator shall oversee such determinations.

Once a State has met the requirement of subsection 602(b)(5) funds from the SRF may be used for any other treatment works as defined by section 212 of the Act (subject to the restrictions of section 602(b)(6), programs and projects identified under the Nonpoint Source Pollution Control Program (section 319), or programs and projects identified under the National Estuaries Program (section 320).

The provision is intended to allow States the flexibility to utilize funds from the SRF to support a variety of measures that the State determines are needed to achieve water quality goals. States are free to fund a wide range of pollution control projects, other than municipal waste water treatment works, once the requirement for assuring progress toward compliance with the 1988 compliance date is met.

Further, a State must demonstrate that any treatment works which is constructed in whole or in part prior to fiscal year 1995 with funds directly made available by capitalization grants under this title or section 205(m), will meet the requirements of the sections 201(b), 201(g)(1), 201(g)(2), 201(g)(3), 201(g)(5), 201(g)(6), 201(n)(1), 201(o), 204(a)(1), 204(a)(2), 204(b)(1), 204(d)(2), 211, 218, 511(c)(1) and 513.

This restriction on the use of Federal capitalization grant funds does not apply to funds contributed by the State in accord with section 602(b)(2), moneys repaid to the fund, or other moneys. State Governors shall assure that the requirements of this subsection are met.

Section 201(g)(1) limits assistance to projects for secondary treatment or more stringent treatment, or any cost effective alternative thereto, new interceptors and appurtenances, and infiltration-in-flow correction. This subsection also provides that State Governors may reserve 20 percent of a State's allotment for projects which meet the definition of treatment works in section 212(2) but are otherwise not eligible for assistance under this subsection. This Governor's reserve is intended to apply to funds made available under this title.

Section 201(n)(1) provides that funds under section 205 may be used to address water quality problems due to discharges of combined stormwater and sanitary sewer overflows, which are not otherwise eligible, if such discharges are a major priority in a State. This provision is intended to apply to use of funds under title VI as well as section 205.

As noted above, the fund may be used to assist publicly owned treatment works as defined by section 212 of the act, the development and implementation of a nonpoint source management program established under section 319 and development and implementation of an estuary program under section 320. This provision is intended to provide a basis for funding of projects to control nonpoint pollution and pollution to estuaries conducted by municipalities, a State, other public organizations, or individuals. All fund management provisions of this title apply to such projects.

The definition of projects eligible for funding under the loan program includes publicly owned treatment works as defined by section 212 of the act. This definition includes planning and design as defined in 212(1), treatment works as defined in 212(2) and replacement as defined in 212(3). Each of these aspects of treatment works is eligible for assistance under this title.

Funds under this title may be used to make loans as provided under section 603(d), but are not to be used to provide direct grants. If as a result of audits under this section, the Administrator finds a consistent and substantial failure to repay loans, he may take corrective action as provided under this title.

This section provides that loan funds may be used to refinance debt obligations of municipalities for eligible projects, where such obligations were incurred after March 7, 1985 This provision is a very important element of the loan fund program in that it allows municipalities and States to work out financing plans which will allow a community to proceed with financing and construction as soon as possible and to achieve water quality benefits as soon as possible. Based on this authority States may agree to participate in project financing at a later date. The requirement in subsection 603(g), providing that municipal waste water treatment projects be included on State priority lists is not intended to prevent a State from providing such refinancing assistance.

Section 603(h) limits the authority of subsection 603(d)(2) by providing that funds may not be used to make direct loans to support the non-Federal share of a project receiving assistance under title II of this act.

This limitation on direct loan assistance does not include ancillary assistance to the municipality which results in a lowering of costs of the obligation (for example guarantee of the local share obligation, insurance of the obligation, etc.). Such indirect assistance to support the costs of non-Federal share shall only be available to municipalities which face severe financial constraints preventing a project from proceeding.

The provision provides for the allotment of funds to States, reservation of funds for planning, and the reallotment of unobligated funds. Funds reserved for water quality management planning under this provision are to be used by the State agency which conducts environmental programs, rather than an agency established to manage the financing of projects with funds provided under this title.

Funds available to States under section 205(g) for the management of construction grant programs under title II may be used to assist the development of revolving loan funds under this title.

There are several other important provisions of the bill which I would like to describe and explain.

Section 210 of the amendments provides for set-aside of a small part of the construction grant fund to support projects for prevention of pollution to marine bays and estuaries resulting from combined storm water and sanitary sewer overflows. It is the intention of the conferees that, for the purposes of this section, the term "marine bays and estuaries" shall be defined consistent with the definition of estuarine zone in section 104(n)(4) of the act. It is not the intention of the Conferees that this set-aside be used for projects at the upper reaches of tidal influence of a river which eventually enters into an estuary.

Section 202(f) of the act provides that assistance made available by the Farmer's Home Administration may be used to provide the non-Federal share of a construction grant project under title II of the act. This provision states the policy of the conferees that such assistance in support of a local share is acceptable, and has been acceptable in the past. The adoption of the provision shall not be construed to imply that, prior to this action, such support for a local share was not acceptable or consistent with congressional intent and policy.

Another important amendment to the act provides that States are to passthrough at least 40 percent of funds made available under section 205(j)(1) to support water quality management planning at the areawide and interstate level. The provision was modified by the conferees to assure that a Governor, with the approval of the Administrator, could provide less than 40 percent of funds to such organizations if such funding would not significantly assist in water quality management planning. The conferees do not intend to imply that funding for areawide organizations should be limited to 40 percent of funds under seciton 205(j)(1). It is not the intention of the conferees that the requirement for passthrough of 40 percent of funds to areawide agencies apply to section 205(j)(5) funding.

The amendments also provide a specific period of 180 days in which communities may apply for variances under section 301(i). The conferees intend that no application whatsoever may be made under section 301(i) after the 180-day period following enactment of the amendment. In addition, the amendment provides that communities which are on a compliance schedule are not eligible to apply for a variance under section 301(i) at any time.

This provision includes any community which is on a schedule established prior to enactment by a court order or an administrative order established by the EPA or a State agency. In addition, the Administrator has discretion in granting variances under section 301(i). The conferees encourage the Administrator to use this discretion to deny applications for variances under section 301(i) where necessary to preserve the stable and effective implementation of the National Municipal Policy and relted agency policies.

The amendments provide for new authority for the EPA to use administrative penalties in enforcement of the Clean Water Act. This provision will substantially increase the Agency's authority to assure full enforcement of the act. The amendments provide that the EPA may use the administrative penalty authority in enforcement cases related to activities which do not have permits as required under section 404 of the act. It is the intention of the conferees that EPA use this authority to provide for full and aggressive enforcement of section 404.

It is also the intention of the conferees that the EPA and the Corps of Engineers develop a memorandum of understanding to provide for the efficient coordination of enforcement activities related to section 404. Such an MOU should be developed as soon as possible, but not later than 6 months after the date of enactment. EPA has the authority to use administrative penalty authority prior to the development of such an MOU. In the event that the EPA and the ACE are not able to agree on an MOU, EPA retains the full authority to implement administrative penalty authority related to section 404 as provided in these amendments.

The amendments also provide new requirements for compliance with treatment requirements of the act. The conferees believe that these new dates are responsible and reasonable can be achieved in virtually all cases. In an unusual case where a date cannot be met despite the conscientious efforts by a facility, the conferees understand that the EPA is able to exercise its discretion with regard to enforcement and penalty authority.

In addition, it is the intention of the conferees that any action by a regulated industry to initiate litigation related to a control requirement which results in a delay in accomplishment of controls, is not a basis for the EPA to exercise its enforcement discretion.

Industries which choose to challenge pollution control regulations in court should not expect that the EPA will use its enforcement discretion and should expect that EPA will fully enforce requirements and compliance dates, regardless of court challenges.

In conclusion, I am confident that the basic design of tne Clean Water Act is sound. We have before us badly needed amendments for fine tuning existing provisions of the act and addition of major programs to address emerging problems.

These proposals are consistent with the national consensus for clean water. The great majority of persons responding to a recent Harris survey either supported the Clean Water Act or wanted it strengthened, even considering the costs of pollution controls. This legislation is an important step toward carrying out this mandate.

I urge my colleagues to adopt the legislation, and I urge the President to sign it. It will be a tragic day, a sad day, for the Nation if the President vetoes this legislation.

Mr. President, I yield to the distinguished chairman of the subcommittee, the man singly most responsible for this legislation and for much of the progress made in this Nation in recent years on protecting the health and environment of this country, Senator CHAFEE.

☐ 1200

Mr. CHAFEE. I thank my distinguished friend and colleague, the Senator from Maine, for those generous comments. Throughout the work on this measure, working with Senator MITCHELL has been not only an intellectual pleasure but also a great personal pleasure. He is a man who knows the act, is truly dedicated to improving the quality of the waters of our Nation. At every step of the way, he was helpful and constructive. This act, in which he generously said I had a major hand, was the result of combined efforts, and his part in it was very significant.

I also thank the senior Senator from Texas [Mr. BENSTON], who was helpful overall in this project. Of course, our distinguished chairman of the committee, Senator STAFFORD, has made this a truly bipartisan matter. I thank the staffs as well.

So it has been a thorough pleasure dealing with this matter, which has gone on for a long time. We passed the bill in the Senate over a year ago.

Mr. President, this sweeping legislation provides a major overhaul of one of our Nation's key environmental laws, the Clean Water Act. Although we have made great strides in restoring our rivers, lakes, and estuaries, much work remains to be done. The legislation before us provides a framework which builds upon our past successes and will lead to major improvements in water quality well into the next decade.

The legislation assures compliance with a strong water quality standards programs and provides for great controls of toxic, conventional and nonconventional pollutants. It establishes a new program to control pollution from nonpoint sources. That is not a point discharge from a factory. Nonpoint means runoff from fields, from roads, and such instances. It continues funding of wastewater treatment works at the $2.4 billion level through fiscal year 1991 while establishing a revolving loan fund to ease the transition to full State and local sufficiency.

I would like to take a few minutes to explain in greater detail a few of the key provisions of the conference report.

The legislation tightens up several regulatory programs. One such program relates to nonconventional pollutants. Under current law modifications can be sought from strong discharge requirements for so-called nonconventional pollutants many of which can be highly toxic. In effort to severely limit the circumstances in which these weaker modifications can be given the conference report allows them for only five specific pollutants. If other pollutants are to be listed for a modification, EPA must go through a special procedure. This procedure requires the Administrator to first determine whether a pollutant meets the criteria of toxic pollutant. If it does, then the pollutant must be listed as toxic from which no variance can be received. If the pollutant is not found to be toxic, the Administrator must then determine whether it can be listed under section 301(g) as a nonconventional pollutant. If it meets that test, the Administrator must finally determine whether an applicant applying for a modification from the effluent guideline for that particular pollutant can meet the test contained in section 301(g). It is expected that each of these steps be conducted through the formal regulatory process. It is also important to note that a stay of requirements for control of pollutants other than the nonconventional pollutant for which the modification is being sought is prohibited.

The legislation also contains provisions which severely limits the opportunities for which discharges can get modifications for fundamentally different factors. A key provision under the fundamentally different factors section specifically excludes consideration of costs, independent of other eligible factors, as a basis for establishing a fundamental difference with regard to an individual facility. Section 304 of the Clean Water Act authorizes the EPA to consider the cost of achieving effluent reductions, in addition to other factors, in development of a guideline for an entire industry. The EPA needs to consider cost when developing a guideline for an industry in order to determine the best available technology for water pollution control which is economically achievable for an entire industry.

While a guideline is intended to account for economic impact on an entire industry, it is not intended to account for the economic impact on each individual facility. The 1972 Clean Water Act conference report stressed this point, directing EPA to "make the determination of the economic impact of an effluent limitation on the basis of classes and categories of point sources, as distinguished from a plant-by-plant determination." If a facility facing higher costs than the overall industry is allowed to reduce costs than the overall industry is allowed to reduce treatment levels below the minimum level, the degree of pollution control at a facility is linked to the economic efficiency of the facility, rather than the economic ability of the industry, and the principle of an industrywide minimum level of treatment loses its meaning.

Although the act does not and should not provide a mechanism to modify the requirements of an effluent guideline on the basis of fundamentally different costs at an individual facility, section 301(c) of the act provides for modification of requirements in a case where such requirements are beyond the economic capability of the owner. Section 301(c) does not allow the Administrator to modify treatment requirements based on a showing of fundamentally different costs to an individual facility, unless these costs are beyond the economic capability of the facility and, therefore, threaten its survival. In addition, section 301(c) is subject to section 301(l), which prohibits the Administrator from modifying any requirement as it applies to a toxic pollutant. This provision assures that toxic pollutants will be controlled, regardless of the economic capability of the discharger. The new authority for treatment modifications based on fundamentally different factors contained in the reported bill is not subject to section 301(l).

Section 301(n)(6) provides that an application for an alternative requirement under this section shall not stay the facility's obligation to comply with the effluent limitation guideline or standard which is the subject of the application. This provision is intended to prevent EPA or the State, or the POTW in the case of indirect discharge, from delaying issuance of the permit or pretreatment mechanism during the pendency of an application.

The owner or operator of a facility seeking an FDF modification has the burden of proving to the satisfaction of the Administrator that the facility is eligible for an alternative requirement under this section. The Administrator's decision to promulgate or deny an alternative effluent limitation or standard under this subsection shall be subject to judicial review pursuant to section 509(b)(1) of the act.

The Administrator may not delegate the authority provided by this subsection to any State. In addition, it is the intention of the conferees that the authority of this section be exercised only by the Administrator or Assistant Administrator for Water, rather than regional or other officials. The Administrator shall obtain the concurrence of a State before approving any alternative requirements under this subsection.

The conference agreement also contains provisions continuing the Chesapeake Bay Program; it establishes a Great Lakes Water Quality Program and sets up new National Estuary Program which provides that management conferences develop control strategies to assist in the clean up of estuaries. This is especially important to the Narragansett Bay in my State of Rhode Island which suffers from degradation of water quality. Funds are also set aside for correction of combined sewer overflows which cause serious pollution in the Narragansett and other estuaries around the Nation.

A new nonpoint source Pollution Control Program, which was contained in both bills, is included in the conference agreement. The program would authorize $400 million over 4 years for States to develop comprehensive programs to abate such pollution sources as runoff from urban areas and farmlands which often contaminated with toxic and other pollutants.

The legislation also beefs up the enforcement provisions of the act by increasing penalties for civil and criminals violations and adds a new authority for the Administrator to assess administrative penalties on violators. The EPA has new authority to assess penalties against unpermitted discharges. We expect the Agency to use this authority aggressively against illegal polluters even if a memorandum of agreement is not concluded with the Secretary of the Army. The corps enforcement record against illegal dumpers is not the strongest and now EPA has the authority to move against these polluters.

Compliance dates for industries for which effluent guidelines have not been promulgated have been extended to March of 1989 or 3 years from date of promulgation, which ever is sooner. EPA is strongly encouraged to get these guidelines finalized so industries can comply with discharge requirements as soon as possible. Until such guidelines are promulgated the Agency is expected to proceed under its current policy with respect to noncompliance of dischargers who will not meet the deadline.

A provision establishing a progressive Stormwater Control Program is included in the conference agreement. Although the law now requires EPA to establish discharge requirements for the stormwater point sources, the Agency has been unable to develop a final permit program for these sources. This legislation sets up a program whereby EPA must issue permits for stormwater point source discharges in municipalities with populations over 250,000 within 4 years of enactment. Within 5 years of enactment, permits for stormwater point source discharges are required in cities with populations between 100,000 and 250,000. These discharge requirements are to contain control technology or other techniques to control these discharges and should conform to water quality requirements. Requirements for stormwater discharges associated with industrial activities are unaffected by this provision. The Agency has been unable to move forward with a program because the current law did not give enough guidance to the Agency. This provision provides such guidance and the conferees expect EPA to move rapidly to implement this control program.

The legislation also contains the Senate provision relating to the Chicago tunnel and reservoir project. This provision only allows funding for this project under section 201(g)(1) without regard to the limitation contained in the provision if the Administrator determines that such project meets the cost-effective requirements of sections 217 and 218 of the act without any redesign or reconstruction. The Governor of Illinois must demonstrate to the satisfaction of the Administrator the water quality benefits of the project. This provision does not apply to the cost-sharing requirements under the other applicable provisions of the bill.

The conference agreement modifies the Senate-passed bill with respect to antibacksliding on best practical judgment and water quality-based permits. The thrust of this provision is to generally prohibit affected permittees from weakening their discharge requirements as a result of subsequently promulgated guidelines. Only in very narrow circumstances can backsliding be permitted, and in no event can it be permitted even if, after a discharger leaves a stream, there is an improvement in water quality, unless the antidegradation policy test is met. That test states that water quality may be lowered only if widespread adverse social and economic consequences can be demonstrated through a full intergovernmental review process.

The conference agreement also embodies much of the Senate-passed proposal with respect to the Construction Grants Program and newly created revolving loan fund. The conference agreement extends the current $2.4 billion annual authorization for title II construction grants for 3 years. In fiscal years 1989 and 1990, the annual authorization for title II would be reduced to $1.2 billion. No further authorizations would be made for title II after fiscal year 1990.

States would be provided with sufficient lead time to begin setting up State revolving loan programs. The committee bill encourages the creation of these self-sustaining financing entities at the earliest opportunity by providing each State with an option of converting title II construction grants funds into capitalization grants for SRF's.

Beginning in fiscal year 1989 and continuing in fiscal year 1990, $1.2 billion a year would be authorized specifically for capitalizing SRF's under the new title VI. In fiscal year 1991, the amount would be increased to $2.4 billion. Thereafter, the SRF authorization would gradually be reduced by providing $1.8 billion in fiscal year 1992, $1.2 billion in fiscal year 1993, and $600 million in fiscal year 1994. After fiscal year 1994, all authorizations for direct Federal contributions to municipal wastewater treatment or SRF's would be ended.

Mr. President, I ask unanimous consent to have printed in the RECORD a chart showing the fiscal years and funding levels.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[In billions of dollars]

	Construction grants (title II)	Revolving loan fund (title VI)
Fiscal year		
1986	2.4	
1987	2.4	
1988	2.4	
1989	1.2	1.2
1990	1.2	1.2
1991		2.4
1992		1.8
1993		1.2
1994		.6

Mr. CHAFEE. Mr. President, the total authorizations for title II and VI amount to $18 billion and will ensure that the core treatment-related needs identified in the 1981 amendments will be met.

This approach lives up the commitment made by Congress and the administration to support an annual appropriation of $2.4 billion over the 10-year period of 1981 through 1991 to meet the needs for construction of wastewater treatment facilities. That commitment was restated by then EPA Administrator William Ruckelshaus at a budget hearing before the Environment and Public Works Committee. His statement is as follows:

> I think that while there may be some at OMB who would prefer not to see this kind of program continue, I have not run in personally to those people at OMB, and there is an understanding that there is an agreement with the administration with the Congress that for 10 years this level of funding, at least, is a commitment. If you will note the difference between what we submitted to the President in terms of our budget and what we are now requesting is somewhat less. We went down to $2.4 billion as a result of that commitment. That was something the administration put back into our budget over our submission.

A compromise on the allotment formula for grants to the States is contained in the conference agreement. This compromise only makes minor changes in the present formula.

The revolving loan fund embodied in this legislation presents a great opportunity for the States to eventually assume full responsibility for construction of wastewater treatment facilities in their jurisdictions.

States must first use the funds in loan fund on projects needed to meet the 1988 municipal deadline requirement for secondary treatment. After that requirement is satisfied loan funds may also be spent on activities eligible under the nonpoint pollution program and the national estuary program.

In an effort to encourage cities to move forward with construction with treatment facilities to meet the 1988 deadline the legislation allows for refinancing under the loan program of projects which were begun after March 7, 1985. Although these projects should be on the State priority list to be eligible for refinancing, prior agreements between the State and the municipality should be honored in the event the project is no longer on the priority list.

Mr. President, I would like to conclude by saying passage of this legislation gives us an opportunity to renew our commitment to the national goal of making all of our waters fishable and swimmable. The Water Quality Improvement Act of 1986 strengthens the existing provisions of the Clean Water Act and establishes new cleanup programs which will greatly enable us to address a new generation of subtle—more devastating—problems posed by toxic pollution, stormwater discharges, nonpoint pollution, and contamination of sludges.

A year ago, the Senate passed the clean water bill by a vote of 94 to 0. I would hope my colleagues would give this conference agreement the same resounding show of support and vote "yes" to continue the job of cleaning up our Nation's waters.

There has been talk of the President vetoing this legislation. That would be a drastic mistake. This bill is within the agreed upon authorization level of $2.4 billion for wastewater treatment facilities passed by the Senate and contained in the budget resolution. It provides for an orderly transition for the construction grants program. And most importantly it gives the American people what has been reflected in public opinion polls conducted across the land—that they want clean water.

Finally, Mr. President, I wish to thank the chairman of our full Committee on Environment and Public Works, Senator STAFFORD, the ranking member of the Environmental Pollution Subcommittee Senator MITCHELL and the ranking member of the full committee, Senator BENTSEN for their hard work and diligent efforts to make this legislation possible. I would also like to thank the staff who labored long and hard in putting this legislation together, particularly Bob Hurley and Phil Cummings, Ron Outen, Jeff Peterson, Jimmie Powell, Steve Shimberg, and all the others who spent long hours and what seemed like endless days of negotiations on the bill.

Mr. MOYNIHAN. Mr. President, as New Yorkers, we have daily reminders of our dependence on water, although it is a resource that we too often take it for granted. The striped bass in the Hudson are too contaminated to be eaten safely. Long Island's aquifer which is the drinking water for 3 million New Yorkers is being depleted and polluted. And underneath New York City's streets old leaky mains are reluctantly dispursing water to city residents.

I am pleased to be able to offer some assurances today that we are making progress in cleaning up New York's water, and indeed, that of the entire Nation. The 99th Congress has already passed the Safe Drinking Water Act, which strengthens EPA's capacity to protect and improve our country's drinking water supplies, and which contains the Sole Source Aquifer Protection Act, which I first introduced in 1982, designed to protect irreplaceable aquifers like the one on Long Island.

With the passage of the Clean Water Act Amendments of 1986 we add another cornerstone in our Federal water policy, one that will build on the progress made since the Federal Water Pollution Control Act of 1972, which has come to be known as the "Clean Water Act."

GOALS AND STRATEGIES OF CLEAN WATER ACT OF 1972

The Federal Water Pollution Control Act was enacted in 1972 with an exuberantly optimistic set of goals. By 1983 the act envisioned clean rivers throughout the Nation; by 1985 it sought to eliminate altogether the discharge of pollutants into our waters.

Two major strategies were embodied in the act to achieve these goals. First, a large Federal grant program was established to help local areas construct sewage treatment plants. According to the Congressional Budget Office, $52 billion—in 1984 dollars—total has been spent by the Federal Government on this construction grant program since 1972.

Second, the act required that all municipal and industrial wastewater be treated before being discharged into waterways, to remove pollutants ranging from organic materials, bacteria, and viruses to toxic chemicals and heavy metals.

Under the act's national pollutant discharge elimination system the Environmental Protection Agency established limits on the maximum allowable discharge of specific pollutants from treatment plants and industrial facilities. These limits were based on available detection and control technologies, and took into account the compliance costs to the regulated community. They are written into permits issued to all such discharging facilities.

Significant progress has been made toward cleaning up the Nation's waters. According to EPA's 1984 national water quality inventory, many of the most severe pollution problems of the 1960's and 1970's have been abated. Moreover, despite substantial growth in the Nation's population, industry, and development, overall water quality remained roughly stable between 1972 and 1982—a major accomplishment. A 1984 study by the Association of State and Interstate Water Pollution Control Adminstrators found that of 350,000 miles of streams and rivers monitored during this period, water quality improved in 13 percent, stayed the same in 84 percent, and declined in only 3 percent. We have been doing something—several things—right.

The Clean Water Act Amendments of 1986 strengthen and add to our current statutes. I will review briefly the most important provisions in these amendments.

CONSTRUCTION GRANTS FOR SEWAGE TREATMENT PLANTS

S. 1128 authorizes $18 billion in Federal support over 8 years for the construction grants program, on a 55-percent Federal, 45-percent basis. This program enables construction and upgrading of sewage treatment plants.

The goal is to have all sewage treatment plants achieve secondary treatment by 1988—a process which removes 85 percent of solid and organic matter. In 1989, the revolving fund plan begins, the goal of which is to convert the States construction grants program into a self-financing program. Such an approach has worked extremely well in Texas and other States. The Governor will have the discretion to apportion grant funds and loan funds in order to meet the particular needs of his or her State. With wise planning, the States should make this transition without any disruption in their current schedules of priority work.

I am pleased that the current allocation formula for construction grants has been left virtually in place. This formula, which is based on the current EPA needs survey, correctly reflects the immediate needs in our urban areas in the Great Lakes and Chesapeake Bay regions. Our older cities, place the greatest population pressures on the water systems, which also tend to be the oldest systems. New York receives $267 million annually under this allocation.

NONPOINT SOURCE POLLUTION

This bill provides $400 million to initiate the first national program to control nonpoint source pollution, primarily runoff from agriculture and urban areas. Scientists at EPA have determined that nonpoint source pollution—pollution not from a single pipe or outfall—is a significant contributor to degredation of water quality. This includes runoff contaminated by fertilizers and other chemicals, as well as runoff from city streets which often contains high levels of salts and oils.

As part of this effort, conferees worked diligently with cities and counties as well as with environmental groups to devise a stormwater permit system that would improve water quality without being too costly or too cumbersome for EPA to administer. A recent court decision had ordered EPA to issue permits for virtually all storm sewers, which would have required EPA to issue 50,000 more permits on top of the 65,000 point source permits EPA already issues. This would have diverted EPA personnel efforts from control of toxic contaminants in water to a paper shuffling exercise that would not be result in environmental improvements in most cases. The conference agreed on a provision which would require permits from industrial discharges to storm sewers, and from cities over 250,000 in population where those discharges are significant contributors to pollution.

CLEAN LAKES PROGRAM

S. 1128 provides $85 million for a clean lakes program which States can use to clean up silted lakes, and to lime acidified lakes.

ESTUARIES PROGRAM

The bill provides $48 million for an estuary research program, which identifies several estuaries of national importance, including New York and New Jersey Harbor. Under this provision EPA can offer up to $10 million per year on a 50-percent matching basis to States to study and implement cleanup in the New York-New Jersey Harbor area.

BAN ON DUMPING OF SLUDGE IN THE NEW YORK BIGHT

The bill bans as of December 1987 any additional users from dumping sewage sludge in the New York Bight 12 miles off Sandy Hook, NJ. The bill also restricts the use of the site 106 miles off the coast to those currently using the 12-mile site.

FUNDS FOR BOSTON TREATMENT PLANTS

S. 1128 includes $100 million to fund sewage treatment plants in Boston Harbor, assisting Boston in complying with its court ordered directive to stop dumping sludge in the ocean.

GREAT LAKES OFFICE

The conferees agreed to establish a Great Lakes International Coordination Office within EPA to focus on control of toxic pollutants and achievements of goals in the Great Lakes Water Quality Agreement of 1978. The bill also establishes a Great Lakes Research Office with the National Oceanic and Atmospheric Administration to carry out a comprehensive Great Lakes Research Program, with special attention to sediment control projects.

All in all, this is a most worthy bill, which will improve upon the good work already begun by the Clean Water Act of 1972. I heartily support passage of the conference report, and I commend my fellow conferees for their good sense and hard work.

I ask unanimous consent that material summarizing the construction grants program in New York be printed at this point in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

The House-Senate conference report on the Clean Water Act provides $267.9 million annually in federal grants for the construction of sewage treatment plants and sewers in New York State through 1990. The New York State Department of Environmental Conservation has identified the following for priority funding:

New York: Oakwood Beach (Staten Island); Owl's Head Treatment Plant (New York City); Fort Covington (St. Lawrence County); Schuylerville (Washington County); Village of Gowanda (Cattaraugus County); Village of Oxford (Chenango County); Village of Croghan (Lewis county); Cedar Creek Sewage Plant (Nassau County); Mamaroneck Sewer District (Westchester County); Dewey Eastman Tunnel (Monroe County); City of Gloversville (Fulton County); City of Batavia (Genesee County); Buffalo Sewer Authority (Erie County); Chautaugua Utility District (Chautauqua County); City of Binghamton (Broome

County); Cheektowaga (Erie County); Village of South Glens Falls (Saratoga County); Village of Great Neck (Nassau County); and Great Neck Sewer District (Nassau County).

Mr. STAFFORD. Mr. President, I yield 2 minutes to the very able Senator from South Dakota [Mr. ABDNOR].

The PRESIDING OFFICER (Mr. BROYHILL). The Senator from South Dakota is recognized.

Mr. ABDNOR. I thank the chairman for yielding. I will be very brief.

Mr. President, the previous speaker, the gentleman who guided this clean water bill through the Senate and the conference committee, is far too modest. It is true that there are a lot of people who helped, particularly our full committee chairman and the very able staff of Senator CHAFEE, but I happen to know that a number of people said a week or so ago that this bill was dead, and they did not have any hope for a final conference agreement on the Clean Water Act Amendments of 1986.

□ 1210

How do I know? I know because I am the chairman of the Subcommittee on Water Resources that is conferencing the national water policy bill. As it often happens at the tail-end of a session, Members begin to look around for an opportunity to attach their legislation to another, nongermane bill.

This is exactly what happened as we tried to work out the differences between the House and Senate on the national water policy bill even as Members of both Houses were working to resolve their differences on the clean water bill.

I am happy to report that Senator CHAFEE has been successful in bringing his bill to the floor in final form. I am still striving to reach final agreement on my water policy bill so that it, too, may be passed in these closing days.

At one time we believed the conference report on the national water policy bill was more likely to be the first to reach the floor.

So it is a great credit to this gentleman. With the help, of course, of others he has developed a sound approach to addressing our remaining water pollution problems, whether they are the result of discharges from either point or nonpoint sources.

For this, I think, we all owe him a great deal of thanks. It is absolutely imperative that we pass this vital legislation. It is long overdue.

I join the other proponents of this legislation in urging our colleagues to say to Senator CHAFEE, Senator STAFFORD, and their fellow conferees, "It is a job well done," by voting to approve the Clean Water Act Amendments of 1986.

Mr. STAFFORD. I thank the very able Senator from South Dakota for his words.

In a very short minute we will be ready to yield back our time and vote on this issue.

But before we do that, in view of the kind things that have been said on both sides of the aisle, I do want to say as chairman of the Committee on Environment and Public Works that I have taken a great deal of pride in the work the committee has done this year on a bipartisan basis.

This really is one of a series of major pieces of legislation which thanks to the Senator from Rhode Island, the Senator from Maine, and Senator BENTSEN has been made possible. Much of the work that has made it possible has been accomplished in a bipartisan spirit by the Senators of the committee, including Senator ABDNOR, and as has been noted the very fine staff that has worked for the committee over the last several years.

One note of the fact that the staff has operated as well as the committee on a bipartisan basis is the fact I see in the back of the Chamber some of the Republican staff operators are seated with some of the Democratic staff operators which truly indicates a bipartisan support.

Mr. DURENBERGER. Mr. President, we have before us the third conference report on a major environmental bill in this session of the Congress. In May we sent the President a reauthorization of the Safe Drinking Water Act. Two weeks ago we were here on the floor with the conference report to reauthorize the Superfund Program. And tonight we will be concluding the legislative process on the Water Quality Act of 1986 which amends and extends the Clean Water Act protecting the surface waters of the Nation.

That we have been able to conclude work on these three major pieces of environmental legislation gives all of us a sense of accomplishment. And there may be more good news in the next few days. We may also add an omnibus water resources bill and a reauthorization of the Nation's pesticide law to this list of environmental achievements for the 99th Congress.

We are here tonight largely as a result of the tireless work of the distinguished Senator from Rhode Island [Mr. CHAFEE], who is chairman of the Environmental Pollution Subcommittee of the Senate. Along with Senator MITCHELL, the ranking member of the subcommittee, and Senator STAFFORD, the chairman of our full committee, the Senator from Rhode Island has spent long hours in hearings, markup and conference sessions and floor debate to bring this bill to this point in the legislative process. This is a major piece of legislation. It has been pending before the Congress for several years. And over that whole period, Senator CHAFEE, has been a consistent champion of the Nation's water resources. He has shown no inclination to compromise the goals of the Clean Water Act just to get a bill and tonight his dedication to those principles is rewarded with an excellent piece of legislation that adds much to a law which has already been quite effective in improving the quality of the Nations's surface waters.

Before turning to the substance of this legislation let me just mention the role of two of my fellow Minnesotans who serve in the other body and who were instrumental in developing this legislation. Both Congressman STANGELAND and Congressman OBERSTAR from Minnesota serve on the Water Resources Subcommittee of the House and were active members of the conference on this legislation. All of us from Minnesota are proud of the contribution they have made to this bill.

The principal feature of this bill is a reauthorization of the municipal wastewater treatment construction grants program. Title II of the Clean Water Act has provided more than $40 billion to the cities of our country to build sewage treatment systems over the past decade and one-half. We add another $18 billion to that commitment with the enactment of this bill. But we also begin the process of phasing out the construction grants program. During the phase down period, States will convert Federal grants into revolving loan programs so that Federal dollars can be recycled and will continue to protect the Nation's waters well into the future.

One controversial aspect of this legislation was the allocation formula for the construction grants program. In June of last year, when the Senate was considering this bill for the first time, I felt compelled to put together a coalition of members representing the Great Lakes States to protest the allocation formula that was included in the bill as reported by the Environment Committee.

The formula was grossly unfair to the Great Lakes States and would have threatened our efforts through the Water Quality Agreement of 1978, an international treaty with our closest friend in the community of nations, Canada, to restore and maintain the quality of the waters of this international treasure. I will have further comments on the Great Lakes at a later point in this statement, but for now let me simply say that I am very happy to tell the Senate tonight that the Senate provision on the construction grants allocation formula did not prevail in the conference.

The Senate was thoroughly whipped in the conference. We were so badly defeated, in fact, that my colleagues from the Great Lakes will be able to go home to their constituents and boast about this failure of the Senate. Each State in our region will lose only a small amount of funding as against the current formula, but in no case will it be more than 1 percent of the current allocation. These lost funds, amounting to approximately $18 million across the whole Nation, will be sent to Texas in what is best characterized as a compromise with political reality.

There are several other provisions of this legislation which should be mentioned in any thorough summary of its features: the Clean Lakes Program is reauthorized and extended to problems of acid mitigation for lakes damaged by acid rain; the bill contains a provision prohibiting backsliding from effluent limitations in existing permits; there is a new estuary program and a program to further the efforts to clean up the Chesapeake Bay; and we have established a new role for Indian tribes in achieving the goals and requirements of the Clean Water Act.

There are three major provisions of the legislation relating to nonprofit sources of pollution, stormwater discharges and the Great Lakes which I will discuss at length this evening. Before doing so, let me, if I may Mr. President, make brief comment on the anti-backsliding provision of this legislation. The purpose of the anti-backsliding amendment is to assure that we keep the improvements in water quality that have already been accomplished under the act. I have listened to the description of this provision provided by the distinguished Chairman of our Committee, Senator STAFFORD, and am in complete accord with the statement he has made. There are exceptions to the anti-backsliding requirement, both for permits based on best practicable judgments and those based on water quality standards. But even with the exceptions, the intent and effect of the legislation is clear. Except in extraordinary circumstances those improvements in water quality which have been achieved as a result of permits issued under the Clean Water Act will be maintained and other factors including improvements in water quality due to additional efforts under the act, the promulgation of different and less stringent effluent guidelines, or other unrelated causes, cannot be used as a justification to shutdown pollution control technology that is in place and operating to meet effluent limitations in existing permits.

NONPOINT SOURCE POLLUTION

The legislation we are reporting today establishes a new program under the Clean Water Act to require development of management programs to control nonpoint source pollution.

The new section 319 of the act requires each State, individually or in combination with adjoining States, to submit a proposed nonpoint source pollution management program to the Administrator of the Environmental Protection Agency within 18 months of enactment of this legislation. These State programs will have seven principal elements.

First, they will identify waters within the State which are not expected to attain water quality standards or the goals of the Clean Water Act without control of nonpoint sources of pollution.

Second, the State programs will designate categories, subcategories, or particular nonpoint sources that contribute significant pollution to those waters.

Third, the State programs will identify best management practices, so-called BMP's which will be undertaken to reduce pollution in each category or subcategory taking into account the impact of the proposed practice on ground water quality.

Fourth, the programs will include nonregulatory or regulatory measures for enforcement, technical and financial assistance, education, training, technology transfer, and demonstration projects to assist in the development and implementation of BMP's.

Fifth, the programs will include a schedule containing annual milestones for utilization of the measures identified and implementation of the BMP's identified at the earliest practicable date.

Sixth, the programs will contain assurances that existing State laws are adequate to carry out the proposed program or contain a stated intent to seek additional needed authority together with a proposed schedule.

And finally, the State programs will identify Federal financial assistance programs and Federal development projects to be reviewed by the State for their consistency with its proposed program.

The provision that adjoining States may develop proposed programs together is intended to promote cooperative actions among States to deal with water quality problems in downstream States when those problems are, in part, a result of nonpoint source loading in upstream States. Downstream water quality problems may result from transboundary delivery of pollutants that are not sufficient to cause identification of the water body by the upstream State, but which nonetheless contribute substantially to water quality problems in the downstream State. Until those upstream sources of nonpoint pollution are brought into the program, the nonpoint source pollution problem in the downstream State may not be adequately addressed, as no measure of control applied in the downstream State will affect the pollution in the upstream State. In such cases, the upstream State may have little incentive to incur program costs that will result in water quality benefits primarily to the downstream State. The Administrator is given the authority to provide extra funding for such interstate cooperative efforts under the provisions of this act.

A joint or cooperative management program may also be appropriate when the affected water body is shared by more than one State, for instance, an estuary lying in two or more States or a lake or river that forms the boundary between two States.

In the conference, the Senate agreed to a House provision which provides for convening an interstate management conference when nonpoint pollution in one State causes water quality problems in another. Such conference can be convened at the request of a State or by the Administrator acting on information which is available. If the conference reaches any agreement with respect to reducing nonpoint pollution in the upstream State, the program of that State shall be modified to reflect the provisions of the agreement.

This legislation requires each State to identify those waters within its boundaries which, after implementation of point source controls, will not attain or maintain water quality standards or the goals and requirements in the act without controlling nonpoint sources of pollution. The State need not demonstrate that the nonpoint sources of pollution are the sole cause for the water quality standards are not being attained or maintained. The fact that the standards are not likely to be attained or maintained under existing conditions in the reasonably near future, and that there are loadings of pollutants from nonpoint sources of pollution that can reasonably be expected to be contributing to the water quality problems, should suffice for a State to identify such water under this act. In identifying such waters, the State should not focus only on the immediately adjacent waters to nonpoint sources, but also consider downstream segments, lakes, and other water bodies where such pollutants may accumulate and cause water degradation.

The reference both to water quality standards and to the goals and requirements of the Clean Water Act arises from the fact that not all water quality standards yet reflect the act's goals and requirements. In such cases, identification and control of nonpoint sources can contribute to improvement in water quality and upgrading of water quality standards.

In reference to specific nonpoint sources under section 319 the term "significant" is inserted to exclude trivial sources of pollutants or sources of pollutants which are not related to the water quality problems identified by the State program. The term "categories" in this subsection could include sources such as cropland, rangeland, pastureland, forestland, construction sites, industrial sites, mines, residential areas, streets, roads, highways, other developed land, and wild areas. Within each of these categories, subcategories can be defined on the basis of characteristics such as geographical location, type of activity, size of facility, topography, and other factors. The State has broad discretion to establish categories and subcategories that may be useful in terms of the types of nonpoint source pollution problems and the program that the State will implement to control them. However, the categorization must be sufficiently comprehensive to include all significant sources.

Particular nonpoint sources as referenced in this section could be identified when they, in and of themselves, are significant contributors of pollutants, or in some way are sufficiently unique that they cannot reasonably be included in one of the categories or subcategories.

The term best management practices is left undefined in this bill because of a concern that any definition would limit the States' flexibility and perhaps undercut existing programs in which best management practices have been identified, including conservation tillage, grassed waterways, cover crops, undisturbed field perimeters near waterways, and terracing. The selection of the appropriate BMP's in a particular instance would depend upon soil type, topography, desired crop, costs of implementation, and other factors. Simple and cost-free changes in agricultural practices, such as careful scheduling and application of fertilizer and pesticides, may reduce runoff of these pollutants thereby resulting in cost savings to the farmer.

Best management practices have also been identified for reducing runoff from urban areas including storm water containment structures construction areas including erosion barriers such as straw bales and dikes silviculture areas including careful road placement, culverting, grassing of abandoned roads and skid trails and grazing lands including herd and vegetation management.

States are required to consider the impact of management practices on ground water quality. Because of the intimate hydrologic relationship that often exists between surface and ground water, it is possible that measures taken to reduce runoff of surface water containing contaminants may increase transport of these contaminants to ground water. The State should be aware of this possibility when defining beat management practices especially in aquifer recharge areas.

Mr. President, this legislation allows a State great flexibility to design a management program containing regulatory or nonregulatory components, or a mixture of the two. The list of possible program elements is not intended to be exclusive. It is expected that States will differ in the program strategies they adopt. However, a State program must have a clear purpose which is to achieve implementation of best management practices by the identified sources as soon as practicable so as to reduce nonpoint pollutant loadings and improve water quality within that State. The State is expected to demonstrate that its management program will provide reasonable assurance that appropriate control measure will actually be adopted by the categories, subcategories and specific sources identified in the State's program. Further, the State is required to commit itself to a schedule containing milestones for implementation of BMP's by such source. This is a requirement that the State take responsibility for the effectiveness of its program in terms of implementing the best management practices by sources, as distinct from merely committing to carry out its identified program activities. The Administrator, in awarding subsequent program grants must consider the State's record in meeting these commitments and determine that the State is satisfactory implementing its program.

Milestones for both program implementation and the implementation of best management practices by sources must be established to provide for implementation at the earliest practicable date. This requirement reflects the importance of the nonpoint source pollution problem and is intended to demonstrate congressional intent that BMP's be implemented expeditiously. Consistent with this general requirement, States may establish different milestones for different categories of sources. No single date or statutory schedule is included in order to allow the State to take account of variations in the number and types of sources and pollutant reductions. Similarly, different States may commit to different schedules based on characteristics of the Senate program.

In the new section 319, the term "as expeditiously as practicable" takes into account the current laws of the State or local governments and the schedule for meetings of the legislature, but indicates that, taking account of these factors, the needed authorities will be adopted as soon as possible.

The bill also vests authority with the States to identify Federal financial assistance programs and Federal development projects for which the State will review individual assistance applications and development projects for their effect on water quality to determine if they are consistent with the State's nonpoint source pollution management program.

This subsection is based on the provisions of Executive Order 12372. This Executive order, issued by President Reagan, replaces OMB Circular A-95 and establishes procedures by which State authorities may comment upon applications for Federal assistance and Federal development projects to assure that the federally supported activities and projects are consistent with State needs and objectives. This bill assures that the provisions of the Executive order, as in effect on September 17, 1983, will be applicable to the State's implementation of this review process, with respect to its nonpoint source management program, regardless of any subsequent revisions of the Executive order. The bill also allows States to designate any Federal assistance program or development project listed in the most recent Catalog of Federal Domestic Assistance, rather than just those programs and projects subject to the current Executive Order 12372. The purpose of this provision is to allow the State's to review any Federal program or project that the State determines needs to be reviewed for consistency with its nonpoint management program. This provision builds upon established procedures for State review of Federal activities. It will provide the States with an important tool to assure that proposed Federal assistance and development projects are implemented in a manner which the State deems consistent with its nonpoint source pollution management program.

In developing its program the States may use information developed under other pertinent sections of the Clean Water Act in the development of their programs, particularly the section 208(b) waste treatment management plans, if the State determines those plans to be consistent with the goals and objectives of this new section. States may also cooperate with local agencies or organizations in the development and implementation of their programs. This would include agencies receiving funding under section 205(j) of the Clean Water Act and soil conservation districts.

In many cases, information and institutional relationships developed under the section 208 planning process will be relevant to, and consistent with, the requirements and objectives of this bill. Many States relied upon regional organizations and the section 208 planning process to gather needed data about nonpoint source pollution and to promote local and regional cooperative pollution control efforts. The States are encouraged to build upon these program elements in constructing the program required by this bill. However, the bill does not require the use of section 208 plans or local agencies and organizations because some State programs have evolved well beyond the section 208 planning effort, and also because some States gave inadequate or inappropriate attention to nonpoint sources in their 208 plans. In any case, the State has the flexibility to select the program elements that will most effectively fulfill the requirements and objectives of this bill.

The States are authorized to develop their programs on a watershed-by-watershed basis as is appropriate in a program that focuses on water bodies or segments which are not meeting water quality standards. However, this provision should not result in fragmented programs farmed out to local agencies or organizations. We are establishing State programs in this section and expect central, policy-setting direction from the States in implementing this program. In that regard, Mr. President, I would highlight a significant difference between the House and Senate bills. The House bill would have allowed the States to develop narrow programs for particular watersheds or categories of nonpoint pollution and satisfy the requirements of the legislation. The Senate bill included a broader scope—a full scope—including all water bodies within a State exhibiting nonpoint problems and all categories and subcategories contributing to those problems. The conference adopted the Senate approach.

As with any cooperative Federal-State program this legislation includes procedures for review and approval of the State program. The Administrator shall decide whether to approve or disapprove a State program within a 6-month period after it is received. If the Administrator determines that it does not comply with the requirements of this act, he must notify the State of any modifications necessary to obtain approval. The State is then given 3 additional months to submit a revised program, to be approved or disapproved by the Administrator. If the Administrator determines that a State management program meets certain requirements he will approve the program. Under the Senate legislation the Administrator was to examine the State program to assure that the seven elements which I described earlier are included. Under the House legislation the Administrator was also required to determine that the State program would meet the goals and requirements of the Clean Water Act, would improve water quality within the State, would reduce pollutant loadings from nonpoint sources and that there would be sufficient resources and authority at the State level to implement the program. The conference report adopts both the House and Senate criteria for reviewing and approving or disapproving State programs.

If the Administrator fails either to approve or request modification of a submitted State program within 6 months of receipt, the program is deemed to be approved. Likewise, if the Administrator fails to approve or disapprove a program revised at his request within 3 months of receipt, such a revised program is deemed to be approved. This provision is intended to assure that implementation of programs to control nonpoint sources of pollution are not delayed because of inaction on the part of the Administrator.

In determining whether the proposed program meets the requirements and objectives of the Clean Water Act, the Administrator should take into account any public comments he has received, including those of downstream States that may be affected by the program. The Administrator's review should involve considerably more than a checklist of required program elements. Under the legislation reported by the conference, the Administrator must review submitted programs in light of the goals of the Clean Water Act and the purpose of this new section which is to achieve reduction of nonpoint source pollutant loadings by the implementation of best management practices by sources and to do so at the earliest practicable date. Before approving the program and awarding Federal grants to support its implementation, the Administrator must be persuaded that the program is capable of meeting the objectives.

If a State fails to submit a nonpoint source management program consistent with the new section 319, the Administrator is to carry out some requirements of the act on behalf of that State. The Administrator is thus required to identify waters within the noncomplying State exhibiting nonpoint pollution problems and designate categories or subcategories of significant contributors to that pollution. Any actions of the Administrator pursuant to this subsection shall be reported to Congress.

Subsection (h), (i), and (j) of the new section 319 authorize Federal grants to States to assist in implementing approved management programs and authorizes funds to be appropriated to the Environmental Protection Agency for the administration of this program. The Federal grants are not to exceed 60 percent of the costs of implementing the management program of any State. Non-Federal funds must be equal to at least 40 percent of the costs of each State program. This requirement will ensure adequate State financial involvement while providing necessary Federal financial assistance.

The Senate bill contained a formula for the distribution of the authorized funds. The House bill did not. The conference report deletes the legislated formula. The Administrator is to determine the apportionment of funds among the States according to the needs of the States reflected in reports on the extent of nonpoint pollution problems and the quality and promptness of State programs to control nonpoint sources.

The legislation provides financial incentives to States to implement programs that address particularly difficult nonpoint source pollution problems. In such cases, the environmental benefits from controlling the pollution may be large, but the State may be reluctant to devote a disproportionate amount of its program funds to such problems. The Administrator is expected to use the authorized funds to achieve more effectively the objectives and requirements of this act. Additional funding to States with particularly difficult problems will result in more expeditious implementation schedules and more rapid reduction in nonpoint source pollutant loadings.

Interstate nonpoint source pollution problems may be difficult because the program costs to control the pollution may accrue mostly to the State while the environmental benefits accrue mostly to another. In such cases, the Administrator may supply additional discretionary grants to the appropriate State, or may provide additional funding to a joint or cooperative interstate program.

In addition, these funds may be used to assess the relationship between nonpoint source pollution and ground water quality. The conference report includes a provision of the House amendment which authorizes the Administrator to makes grants to States with approved nonpoint programs to protect ground water resources from nonpoint sources of contamination.

The conference report provides that any funds not obligated in the fiscal year for which they were appropriated shall be reallotted among the States in the following fiscal year.

The new section 319 provides that States may use Federal funds authorized by this bill for financial assistance to persons only insofar as the assistance is related to costs of implementing demonstration projects. These Federal funds are not to be used as a general subsidy or for general cost sharing to support implementation of best management practices by persons. However, a State is not precluded from using or directing other funds for cost sharing or other incentive programs if it so chooses.

The term "demonstration projects" includes projects designed to educate persons about the application of best management practices and to demonstrate their feasibility and utility as well as research projects to establish the feasibility or cost effectiveness of best management practices.

Initial program grants are required to be awarded to States whose programs are approved by the Administrator. Subsequent grants can only be made if the Administrator so determines that the State is satisfactorily implementing its management program consistent with its commitments to schedules and milestones. This annual review and determination is important to assure that States are effectively implementing their programs and that Federal funds obligated under this section are being used to achieve the goals and requirements of this Clean Water Act.

The conference report authorizes four years of funding for the nonpoint program: $70 million for fiscal year 1987; $100 million for fiscal year 1988; $100 million for fiscal year 1989 and $130 million for fiscal year 1990. These funds are authorized to be appropriated for grants to the several States pursuant to the provisions of this section and for the payment of salaries and expenses of the Environmental Protection Agency necessary to administer the Agency's obligations under this new section.

Additional funding for the program is provided through set asides of funds that the States would otherwise receive under title II of the Clean Water Act. One percent or $100,000 of the construction grant funds allocated to each State shall be used to develop and implement this new nonpoint pollution program. In addition, nonpoint source control efforts may be financed by the Governor's discretionary set aside which is 20 percent of the construction grants funds.

The conference agreement requires each State to submit an annual report to the Administrator on its progress in meeting the schedule of milestones in its program and reductions in nonpoint source pollutant loading and improvements in water quality resulting from implementation of the management program.

The Administrator is required to transmit to the Office of Management and Budget and appropriate Federal agencies a list of the assistance programs and development projects which each State has identified for review pursuant to the authority of this bill. Beginning no later than 60 days thereafter each Federal agency is required to amend applicable regulations so that individual assistance applications and projects for the identified programs and development projects are submitted for State review. The appropriate agencies and departments of the Federal Government are required to accommodate, according to the requirements and definitions of Executive Order 12372, as in effect on September 17, 1983, concerns the State may express about consistency of assisted projects or activities with the State's Nonpoint Source Pollution Management Program.

The intent of this provision was explained partially in the comments I made a moment ago with respect to State responsibilities under this new section. Where the earlier subsection authorized the State to identify Federal programs and development projects for review, this subsection establishes the Federal responsibilities in response to such identifications by the States.

The purpose of the State review is to assure consistency of these Federal Activities with the State's Nonpoint Source Management Program. If the State expresses a concern about consistency, the Federal agency is required to accommodate the State's concerns according to the requirements and definitions of Executive Order 12372 as in effect on September 17, 1983. The intent, therefore, is not to invent new procedures for Federal/State coordination, but rather to incorporate existing procedures by reference in the Clean Water Act. This is an important provision because, without adequate State review, Federal activities over which the State has no direct authority could undercut its program and its water quality goals, possibly jeopardizing the State's ability to meet its program commitments under this section.

It is important that we clarify the meaning of the term "accommodate" in this context. It is a term of art. It means that any project proposed to be developed by a Federal agency or for which any person is seeking assistance must be in conformance with State views, policies, regulations, and laws. If a State objects to any aspect of a proposed project, then that aspect must be modified to reflect the view communicated by the State. Accommodate means modify to take into account concerns expressed by a State or local government in the review process so as to satisfy and remove those concerns.

The Administrator is to establish an information clearinghouse for information pertaining to the costs and relative efficiencies of best management practices and the relationship between water quality improvement and the implementation of various practices. The purpose of this provision is to promote information sharing among the States and to provide the basis for technical assistance to State programs.

The Administrator is required not later than January 1, 1990, to submit to Congress a report, based on information submitted by the States and such other information as appropriate, describing the management programs being implemented by the States and their experience in adhering to schedules and implementing best management practices. This report must also describe the amount and purpose of grants awarded under this program; identify the progress made in reducing pollutant loads and improving water quality; and indicate what further actions need to be taken to reduce nonpoint source pollution in the context of the program.

The purpose of this report is to give Congress the information it will need to determine whether the approach taken in this legislation is adequate. This report will document the progress made under this approach and will provide information that will help determine the necessity of future statutory revisions.

Mr. President, this new section 319 represents a first step in controlling pollution from nonpoint sources. We have been persuaded to take a path somewhat different from that taken for point sources. States are given flexibility to identify priorities. And based on commitments made in this legislative cycle, it is the expectation of the Congress that this program will result in a significant improvement in water quality and nationwide reductions in pollutant loadings from nonpoint sources. We will, of course, revisit this question in the next legislative cycle on the Clean Water Act. We will not find this program adequate, if real improvement in water quality has not occurred. We are not so much interested in elements of a State program as we are concerned with meeting the goals and objectives of the Clean Water Act.

The bill requires the Administrator to enter into agreements with the Secretaries of Agriculture, Interior, and Army and the heads of other appropriate departments and agencies to provide for the maximum utilization of other Federal laws and programs for the purpose of achieving and maintaining water quality through appropriate implementation of plans approved under section 208 of this Act. This amendment would establish the same requirement in terms of management programs developed pursuant to the new section 319. Mr. President, I am especially interested in assuring that EPA and USDA make full use of the authority in this provision. Each year we spend hundreds of millions of dollars through USDA soil and water conservation programs. In the past, these soil conservation efforts have not given sufficient priority to improvements in water quality. It is the expectation of the conference that this provision will give rise to a memorandum of understanding between EPA and USDA which will significantly elevate the priority assigned to water quality protection in projects assisted by the USDA soil and water conservation programs.

As I said a moment ago, Mr. President, the Administrator is directed to reserve 1 percent of a State allocation under section 205(c) or $100,000, whichever is greater for purposes of carrying out the provisions of this nonpoint program in that State. The State may request the use of any amount of the amount reserved by the Administrator. If the State identifies an amount less than the full reserved amount but greater than $100,000, the State may use remaining reserved funds for other purposes under title II of the act. For example, the State would be able to use the funds for direct grants to municipalities for construction of treatment works. The Administrator may establish such administrative and procedural requirements as necessary to assure that funds available to States under this section and section 319 are properly coordinated. Further, the Administrator may require a single application for grants under this section and section 319.

Grants under section 205(j)(5) shall meet the Federal and non-Federal cost sharing requirement set forth under section 319. In management of funds under this subsection, however, the Administrator shall not withhold any portion of funds to support special programs.

These funds are intended to be a supplement to the funds authorized by section 319, not to replace them. It is essential that adequate section 319 funds be appropriated in order to assure the development of a strong foundation of nonpoint management plans. In the event section 319 funds are not appropriated, the funds reserved under this subsection will permit modest nonpoint programs to be developed. However, the funds made available by this provision alone are too meager to support the level of program development that is needed to effectively and adequately manage nonpoint source pollution.

Mr. President, finally let me say that this new program to control nonpoint pollution is an addition to the Clean Water Act and not a substitute for the point source programs already in place under the act. As a nation we have made great progess in reducing the pollution of our surface waters. Much of the work that remains to be done is on the nonpoint side. And we begin that work here. But this is not an excuse to reduce the effort or relax the requirements on the point source side. Reductions in pollution already achieved through point source controls are to be maintained. Point sources not yet in compliance with the law are to be pursued. And on top of that effort we now have a nonpoint program that will bring us much closer to the goal of the Clean Water Act—to eliminate the discharge of pollutants into the Nation's waters.

STORMWATER RUNOFF

Runoff from municipal separate storm sewers and industrial sites contains significant volumes of both toxic and conventional pollutants. EPA's National Urban Runoff study found 63 toxic pollutants, including all 13 toxic metals, in the discharge from municipal separate storm sewers. Of these, lead, copper, and zinc were the most pervasive; EPA found these pollutants in at least 91 percent of its samples. The same study also estimated that municipal separate storm sewers discharge 10 times the total suspended solids that the Nation's secondary sewage treatment plants discharge.

Toxic and conventional stormwater contaminants may adversely affect public health, harm fish and other aquatic species, and prevent or retard water quality improvements even if the best available pollution controls are installed on other point sources.

The Federal Water Pollution Control Act of 1972 required all point sources, including stormwater dischargers, to apply for NPDES permits within 180 days of enactment by 1973. Despite this clear directive, EPA has failed to require most stormwater point sources to apply for permits which would control the pollutants in their discharge.

The conference bill therefore includes provisions which address industrial, municipal, and other stormwater point sources. I sponsored this provision because I believe that it is critical for the Environmental Protection Agency to begin addressing this serious environmental problem.

The bill establishes priorities, deadlines, and permit requirements for stormwater point sources. It affords municipal and nonindustrial dischargers some relief from the act's 1973 permit application deadline.

With respect to municipal separate storm sewers, the bill establishes three permitting priorities: First, those systems serving a population of 250,000 or more; second, those which contribute pollutants to a stream segment which does not attain or maintain a water quality standard; and third, those which are a significant contributor of pollutants to any waters of the United States. If a municipal separate storm sewer or storm sewer system meets any of these criteria, EPA or the State, where the State administers the NPDES Permit Program, must require the source to apply for a permit within 3 years of enactment. EPA or the State should use any available water quality or sampling data to determine whether the latter two criteria are met, and should require additional sampling as necessary to determine whether or not these criteria are met.

If a source is required to obtain a permit, EPA or the State must also act to issue or deny the permit application within 1 year of the application deadline. If no permit application is submitted by the deadline, or if the submitted application is denied, EPA or the State must commence immediate enforcement action against the discharger.

A permit for a municipal separate storm sewer may, where appropriate, be issued on a system or jurisdiction-wide basis for example, where all outfalls discharge to the same body of water. In writing any permit for a municipal separate storm sewer, EPA or the State should pay particular attention to the nature and uses of the drainage area and the location of any industrial facility, open dump, landfill, or hazardous waste treatment, storage, or disposal facility which may contribute pollutants to the discharge. Any such permit shall include a requirement to prohibit effectively nonstormwater discharges to municipal separate storm sewers. Any such nonstormwater discharges to municipal separate storm sewers are currently illegal under the act.

In addition, any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years from permit issuance and shall require controls to reduce the discharge of pollutants to the maximum extent practicable. Such controls include management practices, control techniques and systems, design and engineering methods, and such other provisions, as the Administrator determines appropriate for the control of pollutants in the stormwater discharge.

These requirements place EPA on an action program to control municipal separate storm sewers. Within 4 years of enactment or earlier if the water quality data warrants EPA shall commence control of storm sewer systems serving a population between 100,000 and 250,000. The latter provision reflects the continuing need to control these storm sewers, but gives EPA flexibility, in the first 4 years after enactment, to order its permitting priorities around those sources which are believed to be the most significant. However, it should be clear that storm sewer systems serving populations of 100,000 or less must be covered by the first round of permits where they contribute to water quality exceedance or significantly contribute pollutants to waters of the United States.

Finally, after October 1, 1992, all remaining, unpermitted stormwater point sources will return to current law status and will be required to obtain permits under section 402 of this act. Obviously, Congress will be taking another look at this whole question before and will be informed by the experience with stormwater controls which have been established under the provisions we adopt here.

EPA or the State, where appropriate should provide adequate opportunity for public participation in the development of any permit for a stormwater point source.

The bill also requires EPA to submit to Congress a study of any stormwater discharge or class of discharges which are not required to obtain a permit within the first 6 years of enactment. This study must determine, to the maximum extent practicable, the nature and extent of pollutants in such discharges and procedures and methods to control such discharges. This study will enable Congress to determine whether permitting of the remaining stormwater point sources should be expedited beyond the schedule provided in this bill.

GREAT LAKES

Mr. President, the Great Lakes are the heart of our continent. Over the last 200 years they have been the focal point for development of two great nations. They have been the source of food and drinking water. Today 26 million Americans drink water from the Great Lakes. They are a mode of transportation. They are a reservoir of power and a vast resource for recreation and wildlife; 63 million Americans visit a park on the shores of the lakes each year.

All of these demands have taken their toll. The water quality of the lakes had declined sharply. Unfortunately, the natural unity of the lakes has been overlaid by a fragmentation of State and local governments that have been unable to organize people to protect what nature has provided.

In 1972 and again in 1978, the United States and Canada signed Great Lakes water quality agreements. These agreements require the United States and Canada to provide adequate wastewater treatment facilities for the sewered population on both sides of the border. Canada has met this requirement for 99 percent of its population. At last count, the United States was less than two-thirds of the way there.

In 1982 the General Accounting Office published a report on United States compliance with the Great Lakes Water Quality Agreement of 1978, an agreement with Canada that specifies detailed water pollution control goals. The report concluded that the United States is failing to meet its commitments, especially with respect to toxic chemicals and nonpoint source pollution. This is due in part to the absence of a comprehensive U.S. strategy to implement the Great Lakes Water Quality Agreement. We intend to correct that failing with this provision.

Mr. Presidsnt, the legislation reported by the conference contains at section 104 a new program to restore and maintain the quality of the waters in the Great Lakes. This program owes much to the work of the Senator from Wisconsin, Mr. KASTEN, and was sponsored in committee by the Senator from New York, Mr. MOYNIHAN, and myself.

The conference report contains a statement of purpose. The objective of this new provision of the Clean Water Act is to achieve the goals embodied in the Great Lakes Water Quality Agreement of 1978. The legislation establishes the Great Lakes National Program Office within the Environmental Protection Agency and specifies the duties and responsibilities of the program office.

The program office is to: Develop and implement action plans to carry out the duties of the United States under the Great Lakes Water Quality Agreement of 1978; establish a systemwide surveillance network; coordinate the activities of the Environmental Protection Agency with respect to the Great Lakes; and to work with other Federal agencies to achieve the objectives of the agreement.

The program office will develop a 5-year plan for reducing the amount of nutrients that enter into the Great Lakes and shall incorporate into that plan management programs for nonpoint sources of pollution developed pursuant to the new section 319 of this act.

The program office is to conduct a 5-year study of methods to remove toxic pollutants from the Great Lakes with emphasis on the removal of toxic pollutants from bottom sediments. Certain demonstration projects at specific sites are mentioned in the legislation. These projects are to be given high priority, but the Administrator is authorized to find other projects and this section is not a guarantee that those specific projects will be funded.

The annual budget submission of the Agency to the Congress is to include a line item for the Great Lakes Program Office. At the end of each fiscal year the Administrator is to submit to the Congress a comprehensive report on the achievements of the program office during the preceding fiscal year.

The conference substitute establishes a Great Lakes Research Office in the National Oceanic and Atmospheric Administration. The research office is to identify issues with respect to Great Lakes water quality on which research is needed and is to compile an inventory of ongoing research on those questions. The research office is to develop a comprehensive data base for the Great Lakes System and may conduct research and monitoring activities.

For each fiscal year the program office and the research office are to prepare a joint research program. The head of each Federal department, agency or instrumentality which is engaged in programs or activities which may have an impact on the quality of the Great Lakes shall submit an annual report to the Administrator of the Environmental Protection Agency with respect to those activities and their effect on compliance with the Great Lakes Water Quality Agreement of 1978.

The conference substitute provides an authorization to the Administrator of the Environmental Protection Agency of $11,000,000 for each of the fiscal years 1987 through 1991 to carry out the provisions of this section. Of the amounts appropriated, 40 percent is to be used by the program office to demonstrate the control and removal of toxic pollutants; 7 percent is to be used for nutrient monitoring; and 30 percent is to be transferred to the research office for its programs.

Mr. SIMPSON. Mr. President, I am pleased to support the reauthoriztion package of the Clean Water Act embodied in the conference report. Having been involved in the reauthorization process over the past 2 years, I have been impressed not only by the commitment of Senator CHAFEE, who ably led our work, but also by the willingness of both House and Senate conferees to work hard toward necessary compromises.

This year has been a landmark year for environmental legislation. We have seen the Senate pass a new Superfund, reauthorize the Clean Water Act, and pass an asbestos-in-schools bill. In addition, we have passed and the President has signed a reauthorization of the Safe Drinking Water Act.

I was pleased to be a member of the Clean Water Act conference committee and I trust the White House will sign this bill into law. We have made great progress in the past decade in cleaning up this Nation's streams and lakes. Many waters that were polluted years ago are now fishable and swimmable and we must continue to make diligent efforts to ensure that more lakes and streams are cleaned up and that the pristine waters we have in the West remain pristine.

Of course, the greatest compromise is that which the Congress has now struck with the White House: The administration has won its battle to phase out the predominant Federal role in financing construction grants. This is a major accomplishment on the part of the administration, and I believe it is in the national interest to move toward innovative financing mechanisms deriving their support, as far as possible, from the people who will benefit most directly from the new water treatment works. This bill does just that, and it does so while providing for proper adjustment for communities which may not have taken full advantage of the Federal aid available in the past.

The conference deleted several troublesome provisions, such as the section entitled "preservation of other rights" in the Senate bill, which could have led to some foreseeable as well as perhaps some unintended disruptions of the Nation's State-Federal partnership in water quality control and permitting. There are a number of very delicate yet critical questions concerning intergovernmental relations in water quality regulation, and I am pleased that the U.S. Supreme Court will take an opportunity in this term to wrestle with conflicting circuit court opinions concerning the laws applicable in cases where affected parties in downstream States are alleging harm from permitted discharges in upstream States. Along with other members of the Environment and Public Works Committee, I will anticipate and carefully examine the court's ultimate holding in International Paper versus Quelette, which is to be handed down early next year.

For the first time we have included a provision in the Clean Water Act related to "nonpoint" source pollution that comes from farm lands, timber operations, and other sources of runoff which are not considered "point" sources. All of us Western and Midwestern Senators worked extremely hard to ensure that we were not beginning a new full fledged regulatory program in this regard. Instead, we provided for a voluntary program were States may participate if they so desire. When States choose to participate in the nonpoint source program they will become eligible for grants to carry out nonpoint demonstration and education programs. If States do not choose to participate in the program the only penalty is the lack of Federal funds for nonpoint demonstration projects.

I believe some clarification is needed for a subsection in the nonpoint provision relating to interstate conferences. The statute allows downstream States to petition the EPA Administrator to convene a management conference of all States affected by pollution from nonpoint sources in another State. However, States are not required to participate in these management conferences. There is no penalty for not participating in such management conferences. If States do choose to participate in a management conference that the Administrator would convene, the States are not required to agree to any changes in their nonpoint source programs. If States do not agree to make changes in their nonpoint source programs, there is no penalty for this inattention of action.

The participation in interstate management conferences is totally voluntary, as are any agreements. The conferees discussed this provision at length and it was determined that management conferences would be provided as a vehicle for States to use in discussing pollution of a nonpoint nature that occurs in adjacent States. The statute is very clear that there is no "forcing mechanism," nor is there a provision for penalties for States that do not wish to participate or for States that participate but do not wish to make agreements with other States.

If a State chooses to reach an agreement with other States it is then expected that changes in that State's nonpoint pollution plan will reflect those agreements in the future. Where States are participating in a Federal nonpoint grant program, in no case will the grant moneys be withheld because a State refuses to participate in a mangement conference, or refuses to reach agreements with other States in such a management conference.

In addition, nothing in any agreements reached at a management conference shall supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees or State water laws, nor shall these agreements apply to any pollution which is subject to the Colorado River Basin Salinity Control Act. This would include naturally occurring salts and other solids covered by the Colorado River Basin Salinity Control Act.

The nonpoint source pollution control program was formulated in such a manner that EPA would be granted great latitude in approving State management plans. Nonpoint pollution varies greatly from State-to-State and programs to control this pollution will also vary greatly. Therefore, EPA has the flexibility and authority to approve plans with varying complexity.

It should also be pointed out that the zero discharge goal listed under the Clean Water Act does not apply to nonpoint source pollution since this goal relates to point sources only.

This authorization of the Clean Water Act also contains provisions often referred to as antibacksliding sections. Deletion of House section 402(p)(2)(E) is not intended to prevent permittees that have a zero discharge limitation from successfully having their permits modified to allow discharges if it is found that the operation and maintenance costs of zero discharge were considered and rejected during guideline development as being excessive.

For example, if a general permit required reinjection of produced waters in an oil and gas operation and subsequent promulgated guidelines rejected this technology because its operation and maintenance costs are excessive, such general permits could then be modified based upon new information, such as the operation and maintenance costs. Similarly, if a general permit limitation had the practical effect of prohibiting discharges, such as compliance with overly stringent toxicity limitations on drilling fluids as subsequently promulgated guidelines establish less stringent limitations, this limit could be modified under the act.

The conferees also considered a series of issues related to the role of Indian tribes under the Clean Water Act. On the issue of authority under section 303, there are questions similar to those in the interstate arena, concerning the relationship between water quality standards and permitting by tribal governments and how they might be reconciled, where necessary, with those set by States. Our agreement includes direction to the Environmental Protection Agency to develop a mechanism for dispute resolution in this context, as well as a requirement that certain factors be explicitly included in the disposition of all situations requiring resolution of any unreasonable consequences that may arise as a result of differing water quality standards that may be set by States and Indian tribes on common bodies of water. The factors that must be considered, in addition to other relevant factors, include the effects of differing water quality permit requirements on upstream and downstream dischargers, economic impacts, and present and historical uses and quality of the waters subject to such standards.

As a Senator most deeply involved in developing the conference report language in this area, I am convinced that a workable situation will result from the application of this provision. In addition to the specific factors to be included in the resolution of such cases—factors which I believe will provide assurance to States and citizens concerned with the effects of new authority being granted to tribal Government—we have provided that the mechanism be used to resolve "any unreasonable consequences" that may arise from differing water quality standards adopted by tribal governments. The term "any unreasonable consequences" is necessarily broad, and the intention of the conferees in including this term is to have the dispute resolution mechanism—which includes the specified factors—triggered by a low threshold. This will serve the interests of the tribal governments and others who share in the hope that the Indian tribes provisions in this legislation can be made to work well.

With regard to sections dealing with fundamentally different factors (FDF), I find it curious that the oil and gas industry is being subjected to FDF regularly approaches that are different in different EPA regions. For instance, EPA regions IX and X have issued general permits covering numerous offshore facilities which provide for the discharge of EPA approved muds and additives. While EPA regions IV and VI have also issued general permits, they reject this approach and require muds and additives to meet certain toxicity base limitations. The difference between these approaches is that one sets up an end-of-pipe numeric limitation whereas the other controls what can be put into the pipe and later discharged.

There are other differences between EPA regions as well. Drilling muds and additives are subject to high pressure and temperature conditions down hole and frequently pick up materials from geologic zones drilled through. The existence of these factors and their precise affect upon toxicity results is little known at the present time because of antagonistic and synergistic affects. So we can see that one operator could use certain drilling muds and additives and find out weeks later that his discharge violated the end-of-pipe numeric limits whereas a second operator could use the very same drilling fluids and additives and satisfy the same limit because of different underground conditions.

My hope is that EPA will correct this unfairness and adopt a logical, consistent, and common sense approach to regulating the discharges such as the approach being implemented by regions IX and X. I know of no persuasive reason why this should not be pursued by other EPA regions or why it should not be an essential element of EPA's soon to be promulgated effluent guidelines for this industry.

With regard to the intent of section 306(c), it appears that subsection (1) excludes from the provisions of 40 CFR, part 418, four facilities located in Louisiana. Subsection (2) requires that EPA expeditiously, but not later than 180 days after the effective date, issue permits based on best professional judgment under section 402(a) of the act for these facilities. If EPA decides, after the date of enactment, to promulgate new effluent limitations guidelines for the facilities subject to the provisions of subsections (1) and (2) the BPJ permits will remain in effect until issuance of new permits under the new effluent limitations guidelines.

In conclusion, I would like to thank my fine friend and dogged worker, Senator Chafee for his fine efforts during the Clean Water Act conference. I would also like to thank the very capable Senator Bentsen for his role in the conference as well. Without the efforts of these two hard working Senators we would not be considering this conference report today.

Mr. ABDNOR. Mr. President, will the Senator yield?

Mr. STAFFORD. I am glad to yield to the Senator from South Dakota.

Mr. ABDNOR. I thank the Senator for yielding.

INDIAN TRIBES AMENDMENT

Mr. HART. Mr. President, I would like to engage several of my distinguished colleagues, including the chairman of the Clean Water Conference Committee, in a discussion of the amendments to this bill intended to help Indian tribes address their water quality problems. There is an urgent need for attention and assistance directed toward correcting problems which exist on a significant number of Indian reservations regarding insufficient sewage treatment works and lack of capability to implement programs to protect water quality. Indian tribes, by reason of their inherent sovereignty, have always had the legal authority to protect their reservation environments but have never truly had access to much needed technical assistance and program funding from the Environmental Protection Agency under the statute to effectuate this authority. This amendment is intended to integrate tribal and village governments within the programs of the act so that Indian and native waters will receive the same protection which is afforded non-Indian waters. Mr. President, I think the United States has a trust responsibility to help the Indian people remedy water quality problems, and that was my primary interest in orignially cosponsoring this amendment to the Clean Water Act. I know the Ute Mountain Ute Tribe in my own State of Colorado is very grateful for this much needed amendment and is looking forward to alleviating sewage problems and developing program capabilities in cooperation with the EPA.

Mr. CHAFEE. I agree with my able colleague that we do have such a responsibility to the Indian people and expect that the amendment will focus the efforts of EPA, the Indian Health Service, the Bureau of Indian Affairs and other relevant agencies in aiding Indian tribes and native villages to improve their sewage treatment facilities and to protect the quality of their waters.

Mr. ABDNOR. Mr. President, I believe that significant progress will be made toward these objectives by providing the EPA Administrator the authority to treat Indian tribes as States under the act and to provide such tribes grant and contract assistance to carry out functions provided by this title. The EPA is also given discretion to find an alternative means of meeting the purposes of the act if treating a tribe as a State would be inappropriate. Moreover, consistent with the policy of Indian self-determination, the EPA should encourage the tribes, particularly in the area of construction of waste water facilities, to do as much of the work as is practicable on their own or under contract with the EPA.

The Indian sewage assessment required of EPA will serve as an important foundation of information for determining assistance priorities and charting progress. This survey is to be a thorough accounting of sewage problems for each Indian reservation or community.

Mr. BURDICK. As another of the original cosponsors of these amendments, I believe one of the principal ways in which problems will be effectively addressed is through the provision of grants to tribes to implement the requirements of the act. I want to underscore the fact that the administration is not restricted to matching grants in the case of Indian tribes. The tribes I represent in North Dakota could not afford to develop these problems if they were required to provide matching funds.

Mr. CHAFEE. I thank the Senator from North Dakota for making this point. The conferees recognized that many tribal governments, unlike State governments, do not yet have a regulatory program base, an underlying financial and budgetary foundation or a supporting tax infrastructure which could be used in cost-sharing on these programs. Furthermore, funding assistance priorities should be established according to the severity of the problems identified in the EPA survey.

Mr. BURDICK. Another key aspect of these amendments is the earmarking of construction grants for use by Indian tribes to improve the operation of their sewage systems. One-half percent of these funds are set aside for this purpose.

Mr. CHAFEE. I thank the Senator from North Dakota for his comments and join with him and Senators HART, ABDNOR, and ARMSTRONG in expressing strong interest in seeing that these amendments result in improved water quality for Indian tribes.

Mr. ABDNOR. Mr. President, I also wish to commend Senator MITCHELL and Senator BENTSEN, the distinguished ranking minority members of the subcommittee and full committee, respectively, for their tireless efforts in bringing about this excellent conference agreement. They, too, deserve our thanks.

Mr. President, I rise in strong support of the conference report on S. 1128, the Clean Water Act Amendments of 1986.

As a member of the Committee on Environment and Public Works, I was pleased to participate in the development of this significant environmental legislation. Of special interest to me, and included in this conference report, are vital new provisions to address nonpoint source pollution and water pollution problems on Indian lands.

Additionally, I remain committed to facilitating continued improvement in the quality of our Nation's waters through wastewater treatment grants. In my own State of South Dakota, these grants have proved invaluable to many of the larger communities' efforts to improve their water quality. With the 3-year extension of wastewater treatment grants contained in this conference report, at an authorization level of $2.4 billion per year, a number of South Dakota's smaller communities will now have the opportunity to make similar progress.

Mr. President, we would not be here today were it not for the efforts of the distinguished chairman of the Environmental Pollution Subcommittee, Senator CHAFEE. As the distinguished chairman of the full committee and others have stated, the Senator from Rhode Island is a valued member of our committee. We owe him a debt of gratitude for enabling us to reach this point.

In conclusion, I wish to express my strong support for this conference agreement. It is a balanced, fiscally sound approach to our Nation's water quality needs. I certainly hope President Reagan will agree that this legislation is indeed in the best interest of the American people, and will sign the Clean Water Act Amendments of 1986 at the earliest possible opportunity.

Mr. KENNEDY. Mr. President, I rise in support of S. 1128, the Water Quality Act of 1986. This bill will provide vital funding for communities to initiate and continue projects designed to combat pollution. In the past, insufficient money has been directed to antipollution construction and rehabilitation projects. With the enactment of this bill, communities across the country will have the resources to construct technologically advanced facilities that will address the growing problem of pollution facing cities and towns across our country.

I am especially pleased that the bill contains $100 million for the clean-up of the Boston Harbor. Few cities have a natural resource as magnificent as the Harbor of Boston. It is a unique asset that has witnessed a significant part of the Nation's history. With its 180 miles of scenic shoreline, its 30 islands, and its thriving port facilities, it is a priceless economic and environmental treasure for the 3 million citizens of the area. As the city of Boston has prospered economically, the harbor has flourished too—but it has also been vulnerable to abuse and neglect. Today's antiquated sewerage facilities are inadequate to meet the demands of modern industrial and residential growth. The resulting pollution and decay has threatened the natural beauty of the harbor and jeopardized the prospects of future growth. For years, leaders in the city have recognized that a day of reckoning was imminent.

In 1977, I first introduced legislation to establish the Boston Harbor National Recreation Area, in order to revitalize the harbor and preserve it for the use and enjoyment of the public. In the years since then, we have moved closer to the goal of a harbor that is both economically prosperous and environmentally clean.

Now, with the new provision in the Clean Water Act, we have the chance to take another significant step. A clean, beautiful, prosperous harbor is within reach, with lasting benefits for Massachusetts, the Nation, and future generations.

Mr. HECHT. Mr. President, I voted in favor of the conference report on the Clean Water Act, although I have some misgivings about the provision relating to Indian tribes.

As I understand it, the conference report would give Indian tribes the status of States for purposes of setting water quality standards on waters that flow through both Indian and non-Indian land. This sounds good, but could lead to situations where a tribe might set an unreasonable standard in order to get leverage over a city on an unrelated matter, or to force a city to make water quality expenditures that would otherwise be considered unnecessary.

However, the conferees have assured me that the Administrator of EPA would settle any dispute between State and Indian tribe water quality standards, that the Administrator would take the economic consequences into account, and that he would not allow disputes over water quantity to cloud the water quality issue. Neither would the Administrator be expected to simply accept the more stringent of the Indian or State standard.

I further understand that any standard set by a tribe would be subject to judicial review, so a city or State that thought the tribe's standard was unfair, could challenge that standard in the courts.

With these assurances from the conferees, Mr. President, I feel comfortable supporting this measure.

Mrs. HAWKINS. Mr. President, I rise in strong support of the conference report on the Clean Water bill. This legislation is long overdue. The last major changes to the Clean Water Act occurred in 1981 and since then Congress has tried again and again, unsuccessfully, to pass further improvements to the act.

Absent of this reauthorization package, thousands of communities across the country will be unable to finance construction of secondary treatment facilities and will face State and Federal enforcement actions. We need this legislation to continue progress toward achieving fishable and swimmable water levels nationwide.

I am particularly pleased to note that section 317 of the conference agreement identifies Sarasota Bay for priority consideration under the National Estuary Program. This program is designed to identify nationally significant estuaries that are threatened by pollution, development, and overuse and to promote comprehensive planning for and conservation of such water bodies.

Sarasota Bay functions as the principal environmental resource in the Sarasota region. It is the centerpiece of Sarasota's $900 million economy. It contains a wide variety of seagrass and marine life. However, these precious resources are seriously threatened by point source discharges. The bay is a unique, shallow and slow moving estuarine system with little flushing. Pollutants are retained in larger quantities for longer periods of time, thus requiring more detailed management.

Existing sources of pollution in the bay are multifaceted: major urban development along the shoreline; nonpoint runoff from land development upstream; saltwater intrusion; sewage discharge; and boating use.

The management conferences established under the National Estuary Program would develop comprehensive conservation and management plans which recommend priority actions for the control of point and nonpoint sources of pollution in threatened estuarine systems. The conference report provides $12 million annually for these management conferences to conduct research, monitoring and modeling.

Estuaries are sensitive and diverse ecosystems. Their range of fish and wildlife species and their proximity to large urban areas provide numerous recreational and economic opportunities for millions of Americans. This conference report will provide better protection for these delicate resources.

Mr. WEICKER. Mr. President, I would like to take the opportunity to congratulate my colleagues on the Environment and Public Works Committee on their exhaustive efforts to reauthorize one of the most important environmental laws that Congress has ever contemplated. Mr. President, the dream of one day finding our Nation's lakes, streams and estuaries clean and safe for all could not be realized without such legislation and efforts of the committee.

This bill is a significant renewal of our commitment to fight water pollution. $19.96 billion over the next 8 years is authorized with $3 billion committed for this fiscal year alone. In its traditional mission, a revision to the Sewer Construction Grants Program was agreed to. My own State of Connecticut will continue to receive over $29 million a year to construct treatment plants to protect the rivers of Connecticut from untreated sewage. Creation of construction revolving loan funds will allow funding of treatment plants throughout the country in the future.

With the reauthorization of the Clean Water Act, many new features have been incorporated into the program. For example, the Estuaries Program is established to address the pollution and health threat that is found within our Nation's estuaries. Within Connecticut, it has long been recognized that combined sewer overflows and failures to conduct a coordinated effort in studying and cleaning up Long Island Sound has led to a degradation of Connecticut's rivers and the sound and increased the risk to the States inhabitants. With the work of Senator CHAFEE and others, I feel that a significant step is being made today in focusing efforts on our Nation's estuaries.

Other provisions of the act are particularly noteworthy. This bill authorizes $400 million for a new, State-Federal program to control nonpoint source pollution—polluted runoff from the cities and rural areas of this country. Focus on this form of pollution is especially important since it is estimated that half of all water pollution is from these nonpoint sources. Efforts to cleanup the Nation's lakes will receive $85 million within this reauthorization.

In closing, I would applaud my colleagues' efforts in producing this reauthorization. It is my hope that this bill will be rapidly signed into law to demonstrate congressional concerns for the environment of this country.

Mr. LAUTENBERG. Mr. President, I rise in support of the conference report on S. 1128, the Clean Water Act Amendments of 1986. This legislation, which the House passed by a vote of 408 to 0, is a significant step forward in protecting this Nation's waterways, and deserves our support today. And I commend the conferees for their hard work on this measure.

The bill is supported by environmentalists, water system construction companies, labor, and various industry groups. Unfortunately, however, as is the case with Superfund, there are indications from the White House that a veto may be forthcoming. The administration wrongly asserts that the bill's authorization for construction grants is excessive. These claims ignore the large tasks ahead for cleaning up this Nation's waterways and the fact that the $18 billion authorization is spread over a long period of time.

Mr. President, a veto would be out of step with the will of Congress and of the Nation, and I urge the President to sign this bill.

Indeed this is a nation committed to the principles embodied in this conference report. In the early 1970's the people of this country made a fundamental decision that they wanted a concerted effort to clean up the Nation's waters—waters that are used for fishing, swimming, recreation, and drinking water.

This decision was made because of our growing awareness of and concern about water pollution. News accounts told us about Lake Erie being "dead," the polluted Cuyahoga River in Ohio so filled with oil and debris that it caught fire, millions of gallons of raw wastewaters being dumped into the country's major rivers, such as the Hudson River, and many fish kills and oil spills.

The Congress responded by passing the Federal Water Pollution Control Act Amendments of 1972. This act established a goal—to restore and maintain the integrity of the Nation's waters—which captured the essence of the Nation's desire for clean water.

Mr. President, during the 13 years this act has been implemented, impressive strides have been made in cleaning up our Nation's waters. But much remains to be done. The Clean Water Act Amendments of 1986 include a number of provisions which address problems which are preventing us from achieving the goals of the Clean Water Act. The conference report also addresses a problem on which Congressman HOWARD and I have labored long and hard.

This legislation adopts a provision from a bill I introduced, S. 1838, and which Congressman HOWARD sponsored in the House, that prohibits new entrants from dumping sewage sludge at the 106-mile site, off the coast of New Jersey. This provision will clearly preclude any attempt by Boston to use this site. Although Boston had decided not to pursue this course of action, the court reviewing Boston's sewage disposal procedures had not spoken with finality on the question, and was apparently looking for some action from Congress on this question. Congress has indeed spoken, and Boston's plans, as well as those of any other municipality, to dump sludge off New Jersey's coasts are now clearly and unmistakably off limits.

Also of great importance is future funding for the Construction Grants Program. Since passage of the Clean Water Act in 1972, Federal, State and local sources have invested more than $56 billion in municipal wastewater treatment facilities resulting in the construction or improvement of approximately 3,500 treatment facilities. Properly running sewage treatment facilities are an essential component for cleaning up the Nation's waters. For example, sewage treatment plants in 1983 were removing 65 percent more of the two principle conventional pollutants—suspended solids and biological oxygen demand—than they were a decade earlier.

Yet it is clear that the existing Construction Grants Program is inadequate to meet remaining national needs. According to EPA, eligible construction needs through the year 2000 are \$53 billion. Ineligible needs, those needs not eligible for Federal funding under the Clean Water Act, those needs not eligible for Federal funding under the Clean Water Act, are more than \$50 billion. According to estimates, New Jersey alone has \$4.5 billion in eligible funding needs. New Jersey only receives approximately \$100 million per year in existing Federal construction grant funding. Therefore it is imperative that we implement a new method of financing sewage facilities. A creative framework, which had its origins in New Jersey, is the concept of revolving loans.

The Clean Water Act Amendments of 1986 adopted this concept and will move us closer to the goal of providing an adequate source of stable funding for sewage treatment facilities. S. 1128 would authorize \$18 billion over 9 years of Federal sewer construction grants and loans. Under the bill, the Federal Government will gradually reduce categorical grants for sewage treatment facilities as it phases in a program of grants for States to capitalize State revolving loan funds.

These funds will provide the capital for municipal wastewater treatment facilities in the future. States can make low or no interest loans available to communities for construction of treatment facilities. As loans are repaid to the State revolving loan funds, the funds will be able to loan money to additional communities.

In addition, Mr. President, this bill will help spur the construction of needed sewerage facilities. In the case of municipalities which proceed to begin construction with their own funds, refinancing is permitted from a State revolving loan fund. Presently, most municipalities wait until it is their turn to receive Federal construction grant funding before they begin constructing needed facilities. This refinancing feature of the Revolving Loan Program would eliminate the disincentive for municipalities to move ahead quickly with construction that now exists with the grants program.

Municipalities are facing a 1988 deadline for installing sewage treatment facilities which provide secondary treatment. EPA has threatened to restrict development in municipalities which are not in compliance with the 1988 deadline. New Jersey imposed sewer bans in many municipalities and has warned others that they face such bans if the discharge from their sewerage plants will not comply with requirments of the Clean Water Act. The reimbursement provisions in the conference report to S. 1128 should stimulate cities to meet the 1988 deadline.

Under the bill, States will have to enact legislation to give a legal entity of the state the powers prescribed in the act. During consideration of S. 1128 in the Environmental Pollution Subcommittee, the committee agreed that this legal entity can be an existing or new State entity or agency. When the States enact legislation to implement State revolving loan funds, they will have the flexibility to determine how the fund will operate subject to the requirements of this provision of the Clean Water Act.

For example, States would be able to establish loan terms based on the financial needs of municipalities with easier loan terms available to poorer municipalities. States can decide to initiate their loan funds prior to fiscal year 1989, the year they are required to do so. When States enact revolving loan legislation, they can determine whether to begin using their construction grant funds to capitalize their revolving loan funds prior to fiscal year 1989 and if so, under what terms.

Mr. President, I believe that the revolving loan concept contained in the bill will provide a stable source of funding for the construction of sewerage facilities while providing states with the flexibility to minimize the financial burden of these facilities on local municipalities.

The Clean Water Act amendments only slightly revised the allocation formula for construction grants. I would have preferred the Senate approach, which would have provided New Jersey with \$15 million more in grant funds. But New Jersey stands to receive approximately the same amount it has been receiving—up to about \$100 million—in such funds under the conference agreement.

The conference report to S. 1123 also includes S. 30, the Raw Sewage Abatement Act of 1985. This legislation, which I sponsored, limits the discharge of raw sewage by New York City. At the time I introduced this legislation, New York City was the only major municipality in the country which still discharged raw sewage and wastewater into surrounding waters, without preliminary treatment of its wastes. It did so because of the absence of sewage treatment facilities in two major drainage areas in New York

City. Two court ordered deadlines to cease this practice were disregarded by the city.

The provision that I sponsored imposed a cap on raw sewage discharges from the drainage areas in New York City which were without treatment plants, if the city failed to meet the deadlines for achieving advanced preliminary treatment contained in its current consent decree. If these deadlines were met, the cap would be unnecessary because all raw sewage discharges will cease. If the city failed to meet these deadlines, a cap was to be imposed in the drainage area in violation of the decree. It was to stay in effect until the city brought the affected plant on-line and it operated successfully for 6 months.

The imposition of a cap on raw sewage discharges upon a violation of the consent decree in effect said to the city of New York, "You cannot continue to grow without restraint if you cannot treat your wastes."

Upon violation of the cap, the city would be subject to the enforcement provisions in section 309 of the Clean Water Act. These penalties would be addition to those provided for violation of the consent decree. They include tough civil and criminal penalties, and would enable EPA to seek a temporary or permanent injunction against the city, to bring civil actions against the city and to initiate criminal prosecution in cases of negligence or falsificaiton of records.

With the changes adopted in the conference report, to section 309 of the Clean Water Act, a violation of the cap imposed by this amendment could result in substantial penalities of up to $50,000 a day. A violation stemming from a criminal conviction could lead to imprisonment.

Finally, Mr. President, the legislation states that it is the sense of the Congress that EPA should not extend the deadlines in the city's existing consent decree any further.

I am pleased to note that following the adoption of my amendment, New York City come into compliance with court-ordered schedules for construction of its North River and Red Hook sewage facilities. North River is currently on schedule to attain secondary treatment by 1991. Red Hook is on schedule to attain primary treatment by 1989. While Red Hook is on schedule, the fact that it is not operational means that discharge of raw sewage into the East River still continues. This legislation will ensure that New York's facilities stay on present compliance schedules, with no more extensions, and move us toward eliminating the dumping of raw sewage in the waterways of New York and New Jersey.

New Jersey has had its share of water quality problems. But not one New Jersey municipality is discharging raw sewage. Treatment plants in northern New Jersey are all achieving advanced preliminary treatment, and the major plants serving northern New Jersey are achieving secondary treatment.

The New Jersey Department of Environmental Protection has imposed numerous sewer hookup bans in a number of New Jersey municipalities to improve compliance with the Clean Water Act. Several communities may finance the upgrading of their sewage treatment plants to secondary treatment without any Federal or State aid. In some cases, the Department of Environmental Protection in New Jersey required private sector parties to contribute to local efforts to upgrade sewage treatment facilities as the price of securing a sewer hookup permit and proceeding with planned development.

Mr. President, New Jersey and New York do not need to grow at each others' expense. Regional growth is good for both States. By the same token, Mr. President, this growth should be accompanied by appropriate environmental protection. It must not come at the expense of the environment. It must not come at the expense of New Jerseys tourist and commercial and recreational fishing industries.

Mr. President, these provisions in the conference report on S. 1128 will provide strong incentives for New York City to keep complying with its consent decree and bring its sewage treatment plants on line as quickly as possible.

The conference report on S. 1123 contains a number of other provisions which will strengthen this Nation's effort to clean up its water. These include:

Establishing a new program for cleaning up toxic "hot spots"—waters that will not meet water quality goals even after industrial dischargers have installed the best available cleanup technologies required under existing law;

Requiring States to develop plans for combating nonpoint source pollution, such as polluted runoff from city streets and farmland. Conferees agreed on a $400 million authorization to help States implement the plan;

Restricting the use of fundamentally different factor waivers from national discharge standards;

Prohibiting, except in certain narrowly defined circumstances, so-called "backsliding," or weakening of cleanup standards when industrial and municipal discharge permits are renewed or reissued;

Establishing a national estuary program to solve pollution problems in interstate estuaries such as Delaware Bay and the Hudson-Raritan estuary;

Requiring EPA to establish toxic contaminant criteria for sewage sludge use and disposal and to establish a public health and environmental protection basis for these criteria;

Authorizing a total of $85 million for lake water quality activities, including $30 million for the Clean Lakes Program and $15 million for acid mitigation projects; and

Retaining the existing law's requirement that discharge permits be renewed every 5 years. The House bill would have extended the permit term to 10 years for certain discharges.

Mr. President, I believe that enactment of the Clean Water Act Amendments of 1986 represents a positive step in the Nation's effort to clean up its water resources. Again, I commend the conferees that worked so hard to bring this bill to the floor. I urge the President to sign this bill.

Mr. STAFFORD. Mr. President, at this point I ask unanimous consent that the Senate recede from its disagreement to the amendment of the House to the title of the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STAFFORD. Mr. President, I am prepared to yield back the remaining time on this side.

Mr. MITCHELL. Mr. President, I yield back the remainder of our time.

The PRESIDING OFFICER. All time has expired.

Mr. STAFFORD. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

On this question, the yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Nevada [Mr. LAXALT] and the Senator from Idaho [Mr. SYMMS] are necessarily absent.

I further announce that, if present and voting, the Senator from Idaho [Mr. SYMMS] would vote "yea."

Mr. CRANSTON. I announce that the Senator from Ohio [Mr. GLENN] and the Senator from Colorado [Mr. HART] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 347 Leg.]

YEAS—96

Abdnor
Andrews
Armstrong
Baucus
Bentsen
Biden
Bingaman
Boren
Boschwitz
Bradley
Broyhill
Bumpers
Burdick
Byrd
Chafee
Chiles
Cochran
Cohen
Cranston
D'Amato
Danforth
DeConcini
Denton
Nickles
Nunn
Packwood
Pell
Pressler
Proxmire
Pryor
Quayle
Riegle
Dixon
Dodd
Dole
Domenici
Durenberger
Eagleton
Evans
Exon
Ford
Garn
Goldwater
Gore
Gorton
Gramm
Grassley
Harkin
Hatch
Hatfield
Hawkins
Hecht
Heflin
Heinz
Helms
Rockefeller
Roth
Rudman
Sarbanes
Sasser
Simon
Simpson
Specter
Stafford
Hollings
Humphrey
Inouye
Johnston
Kassebaum
Kasten
Kennedy
Kerry
Lautenberg
Leahy
Levin
Long
Lugar
Mathias
Matsunaga
Mattingly
McClure
McConnell
Melcher
Metzenbaum
Mitchell
Moynihan
Murkowski
Stennis
Stevens
Thurmond
Trible
Wallop
Warner
Weicker
Wilson
Zorinsky

NAYS—0

NOT VOTING—4

Glenn
Hart
Laxalt
Symms

So the conference report was agreed to.

☐ 1230

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. CHAFEE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

HOUSE DEBATE ON CONFERENCE REPORT TO ACCOMPANY S. 1128

October 15, 1986

(Congressional Record, vol. 132, daily ed., H10922-H10943)

CONFERENCE REPORT ON S. 1128, CLEAN WATER ACT AMENDMENTS OF 1985

Mr. MOAKLEY. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 588 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. Res. 588

Resolved, That upon the adoption of this resolution it shall be in order to consider the conference report on the bill (S. 1128) to amend the Clean Water Act, all points of order against the conference report and against its consideration are hereby waived, and the conference report shall be considered as having been read when called up for consideration.

The SPEAKER. The gentleman from Massachusetts [Mr. MOAKLEY] is recognized for 1 hour.

Mr. MOAKLEY. Mr. Speaker, I yield the customary 30 minutes to the gentleman from Missouri [Mr. TAYLOR], pending which I yield myself such time as I may consume.

(Mr. MOAKLEY asked and was given permission to revise and extend his remarks.)

Mr. MOAKLEY. Mr. Speaker, House Resolution 588 is the rule providing for the consideration of the conference report on S. 1128, the Clean Water Act Amendments of 1985.

Mr. Speaker, under the rules of the House, conference reports are considered privileged and are considered in the House under the 1-hour rule, and no amendments will be in order. All points of order against the conference report and against its consideration in the House are waived. In addition, the conference report is to be considered as having been read when called up for consideration.

Mr. Speaker, this conference agreement approves $19 billion in loans and grants from the Federal Government to State and local governments to be used for cleaning the Nation's lakes, rivers, and estuaries. The major provision of the bill would authorize $18 billion for the construction of public sewage treatment plants over the next 8 years.

Ultimately, these plants would treat all domestic waste before it would be allowed to be discharged into the Nation's waterways. The bill also establishes a March 31, 1989, deadline for industries to comply with Federal standards for waste treatment facilities.

Also, Mr. Speaker, there is a provision for $400 million that establishes a national program to control urban and agricultural runoff, more commonly known as nonprofit pollution, this nonpoint pollution accounts for close to one-half of the wastes that are spoiling the Nation's waters.

Mr. Speaker, this bill paves the way for a solution to one of the top environmental issues that this Congress has addressed, by passing this conference report, Congress is in a position to show the American people that we are fully committed to cleaning and perserving our Nation's waterways. I urge adoption of the rule and the passage of the conference report.

Mr. TAYLOR. Mr. Speaker, I yield myself such time as I may consume.

(Mr. TAYLOR asked and was given permission to revise and extend his remarks.)

Mr. TAYLOR. Mr. Speaker, House Resolution 588 waives points of order against the conference report on S. 1128, and against the consideration of the report. The report, which was filed today, revitalizes and strengthens the Nation's primary water pollution control law.

The rule makes the conference report on S. 1128, the Clean Water Act Amendments of 1986 in order, and waives all points of order that would otherwise lie against the report and against its consideration.

In addition the rule provides that the conference report shall be considered as having been read when called up for consideration.

Mr. Speaker, the conference report made in order by this rule is a 5-year reauthorization of the Water Pollution Control Act of 1972, which is often referred to as the Clean Water Act.

The committee of conference agreed to extend the sewer construction program for a total of 8 years by authorizing a total of $18 billion for sewage treatment facilities.

The conference agreement replaces our current Federal grant program for construction of treatment plants at the end 4 years with a loan program. Repayment of the loans would be used to create a permanent revolving fund for making construction loans.

Mr. Speaker, the House passed H.R. 8 in July 1985, and the Members have been waiting for this conference report for over a year. Adoption of this rule will move the House one step closer to a resolution of these longstanding issues, and I urge adoption of the rule.

Mr. Speaker, I yield 3 minutes to the gentleman from Pennsylvania [Mr. Walker].

Mr. WALKER. I thank the gentleman for yielding me this time.

Mr. Speaker, we have heard today a couple of times that the Rules Committee is very reluctant about bringing rules to the floor where they have not had the conference report before them at the time that they wrote the rule. But once again, the third time today, we have got a rule before us that was written before the conference report was available to the Rules Committee.

That reluctance on the part of the Rules Committee is becoming somewhat of a farce when you consider the situation we find ourselves in out here today. Here is a bill once again that when the issue was before the Rules Committee last week, the Rules Committee had not yet seen the conference report and yet they write a rule waiving all points of order against it.

As it turns out, as I understand it, the only point of order that is waived against the bill regards the 3-day rule and we are about 3 days past it anyhow so it does not make very much difference. So it is merely technical.

I would suggest that the pattern that we are seeing here on the floor today is thoroughly unacceptable. We cannot have a Rules Committee considering rules that waive all points of order on measures that they have not even seen. That is just plain wrong. We cannot allow that to go forward day after day and hour after hour on this House floor without paying some terrible consequences. I think the American people deserve to know that when we take up bills waiving the points of order we at least know what is in the bill. That is precisely what we are violating out here and it seems to me that this rule probably makes in order a pretty good conference report, that because of the 3-day layover thing there is nothing particularly wrong with the rule but the process is just plain wrong.

Mr. TAYLOR. Mr. Speaker, I have no further requests for time and I yield back the balance of my time.

Mr. MOAKLEY. Mr. Speaker, I have no further requests for time, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. HOWARD. Mr. Speaker, pursuant to House Resolution 588, I call up the conference report on the Senate bill (S. 1128) to amend the Clean Water Act.

The Clerk read the title of the Senate bill.

The SPEAKER. Pursuant to House Resolution 588, the conference report is considered as having been read.

The SPEAKER. The gentleman from New Jersey [Mr. Howard] will be recognized for 30 minutes, and the gentleman from Minnesota [Mr. Stangeland] will be recognized for 30 minutes.

The Chair recognizes the gentleman from New Jersey [Mr. Howard].

Mr. HOWARD. Mr. Speaker, I yield myself such time as I may consume.

(Mr. HOWARD asked and was given permission to revise and extend his remarks.)

Mr. HOWARD. Mr. Speaker, I rise in strong support of passage of the conference report on S. 1128, the Water Quality Act of 1986, which will extend the Nation's battle against water pollution well into the 1990s.

This bill represents the third major reauthorization of the Federal Water Pollution Control Act of 1972 or Clean Water Act. It is a significant legislative achievement that has taken 4 years of hard effort.

I would like to compliment my colleague from New Jersey, Mr. Roe, the chairman of the Subcommittee on Water Resources, for his extraordinary work on this bill. I also want to thank the gentleman from Minnesota, Mr. Stangeland, the subcommittee's ranking minority member, for his work. The subcommittee staff also deserves praise for the long hours they put in on this bill.

This has been a 4-year effort that started in early 1983 to reauthorize the Clean Water Act, to revise several of the central provisions that needed reworking and to develop some new programs to meet the needs of the 1980s and 1990s. The conference report that we have before us today accomplishes all of these goals in a way that will maintain a strong clean water program for the years to come.

The bill authorizes the continued use of Federal resources to support the local construction of sewage treatment plants. The construction program was one of the significant accomplishments of the 1972 act which this bill continues. The bill authorizes $18 billion for the Federal share of treatment plant construction from fiscal year 1986 through fiscal year 1994.

The importance of this program to our clean water effort cannot be overestimated. Sewage is one of the prime sources of pollution that the Clean Water Act is intended to stop. As of 1982, a decade after the passage of the

Clean Water Act, 142 million people in this Nation were served by at least secondary treatment, an increase of 57 million people in 10 years. During that period, the number of people being served by lines carrying raw sewage into navigable waters dropped from 5 to 1 million and the number of people requiring but not receiving sewage treatment dropped from 21 to 14 million.

At the same time, however, there are still 23 million people who receive less than secondary treatment. The States estimate that a failure to build sewage treatment plants at the pace that took place during that decade would have resulted in increased discharges of 191 percent of organic pollution.

The deadlines have been set for municipal compliance with the secondary treatment requirements. Unless there are specific waivers issued, compliance is by 1988. If we are going to set those deadlines for local officials, we must also provide them with a reasonable opportunity to obtain the resources to comply. Under previous administrations, the Federal Government supplied a high amount of funding for sewage treatment plants at a 75-percent Federal share. Since 1981, the authorization and subsequent appropriation was reduced by half while the Federal share was reduced to 55 percent.

To meet the sewage treatment needs that we face, this bill not only authorizes construction grants through fiscal year 1990 but is includes $8.4 billion that may be used as loans to local governments beginning in fiscal year 1989.

The loan program is in direct accordance with my belief that all levels of government must develop new and innovative methods of financing to meet our massive infrastructure needs. It is clear that the traditional grant programs will no longer meet multibillion-dollar needs that are evident. The loan funding will be distributed to the States using the same allotment formula as the grant program. To qualify, States must create revolving loan funds and deposit a 20-percent matching share.

A second leg of our pollution battle concerns control of industrial discharges. The conference report requires that for priority toxics, toxics, conventional pollutants, nonconventional pollutants that industry install the best available technology as expeditiously as possible but no later than 3 years after the promulgation of effluent guidelines by the Environmental Protection Agency and in no event later than March 31, 1989. The bill includes specific dates for EPA to promulgate those guidelines.

The conference report also authorizes $85 million for the Clean Lakes Program, including $15 million for acidified lakes.

This conference report will prohibit any waivers of secondary treatment requirements under section 301(h) of the act in the New Jersey-New York area. It contains stringent new requirements for obtaining such waivers from EPA in other areas but it specifically prohibits any waivers in the New York Bight. The section 301(h) waivers are not designed for that area and should not be permitted. Secondary treatment must be the standard in that area.

The third part of the conference report involves the creation of new programs to meet the realities that exist a decade and a half after the passage of the Clean Water Act. The conference report includes several new programs that will meet specific needs.

First, the bill authorizes $450 million over 5 years for the development and implementation of plans by the States for the management of nonpoint pollution. There has been progress made in controlling pollution from point sources since 1972 but it is now time to turn our attention to runoff from urban areas, farm land, and construction sites. It is estimated that 30,000 miles of rivers and streams and 880,000 acres of lakes are severely impacted by this runoff. This first Federal effort at controlling nonpoint pollution is a necessary part of our pollution battle.

The conference report authorizes $48 million over 4 years for the development of plans for the cleanup of the Nation's estuaries. These plans are to be developed through interstate management conferences. These conferences are to develop conservation and management plans recommending priority corrective actions and compliance schedules addressing point and nonpoint pollution. A separate program for cleanup of Chesapeake Bay is authorized.

Another major new program creates procedures for controlling pollution in those water that will not comply with the requirements of the act even after implementation of all the basic controls in the legislation. The program requires that States propose individual control strategies for each of these sites for submission to EPA.

This conference report also contains a provision that is a major victory for the New Jersey shore. After a struggle lasting for years, there is agreement on legislation that will close the site located 12 miles from Sandy Hook to all disposal of sewage sludge. Instead, the nine entities that use the 12-mile site will be required to haul their sludge by the end of 1987 to a site 106 miles offshore. The outer continental shelf site is designated for 5 years only.

The conference report also closes that 106-mile site, to all but the nine entities now using the 12-mile site. That means that the Massachusetts

Water Resources Authority, which had planned on using the 106-mile site, and any other authority on the east coast that had been hoping to follow the lead of the Massachusetts authority, will be unable to use that site.

I consider this provision to be a major step in our battle to protect the environment. This sludge dumping just a few miles from our beaches has been taking place for more than half a century. The Council on Environmental Quality reports that the 12-mile site "shows extensive signs of environmental degradation including high levels of bacteria that caused the site to be closed for shell fishing, decreased diversity of benthic marine life over a broad area, and high levels of potentially toxic metals and organic compounds, including PCBs, in the sediments." It is estimated that the sludge, along with the dredged material dumped at the 6-mile site, contributes 63 percent of suspended solids found in the waters of the New York Bight.

It is long past time that this operation 12 miles from Sandy Hook was halted. There is no other area, especially one that depends on clean water for its recreation and economy as does the New Jersey Shore, that must face this continual massive pollution of its most valuable resource. It should have been stopped long ago. This conference report will ensure that it is stopped by the end of 1987.

We did not win the battle against the 12-mile site only to find that our beaches were going to be threatened by even more pollutants from outside the New Jersey-New York area. That is what approval of the application filed by the Massachusetts Water Resources Authority would have meant. That application must not be approved nor must there be opportunity for any other similar applications. Our policy should be to bring about an end to all ocean disposal of sludge, not to allow new dumping. This conference report will prohibit new dumping.

Passage of this bill will be a major advance for the Nation's clean water effort. It has as its goal the continued cleanup of the environment and the control of all forms of pollution.

I strongly urge approval of the conference report.

□ 1750

Mr. STANGELAND. Mr. Speaker, I yield myself such time as I may consume.

(Mr. STANGELAND asked and was given permission to revise and extend his remarks.)

Mr. STANGELAND. Mr. Speaker, I am exceedingly peased to rise in support of the conference report on S. 1128, the Water Quality Act of 1986. This legislation is the result of conference discussions spanning half a year and work by House and Senate committees spanning the past 4 years. Weeks of hearings, thousands of pages of testimony, and countless hours of analysis, discussion and debate have led to development of this vitally important environmental legislation.

The chairman of our Public Works Committee, the gentleman from New Jersey [Mr. HOWARD] and the gentlemen from Kentucky, the full committee's ranking Republican member [Mr. SNYDER], are to be complimented on the encouragement and leadership they have shown during this conference. Special recognition is due the chairman of our Subcommittee on Water Resources, who presided over the conference, the gentleman from New Jersey [Mr. ROE]. Chairman ROE has worked tirelessly for the past two Congresses holding hearings, researching the issues, and perfecting the bill's language. He has devoted entire weekends and worked around the clock on more than one occasion in order to bring this conference report to us today. The legislation is a true credit to him and to his counterpart conference chairman in the other body, Senator JOHN CHAFEE.

I also want to congratulate the Senate conferees, particularly Senators CHAFEE, STAFFORD, BENTSEN, MITCHELL, and MOYNIHAN. They deserve our thanks, not only for their incredibly hard work and dedication, but also their patience and willingness to find balanced and acceptable solutions to the water quality problems which we worked with them to resolve.

Mr. Speaker, a week ago very few in this Chamber, or in Washington for that matter, would have been willing to predict that the House and Senate would reach agreement in the Clean Water Act conference. The issues were seen as being too complex, time was too short, and the attentions of the conferees was distracted by the myriad of issues confronting the Congress at the end of the session. Most people felt that the clean water bill would simply be lost in the rush to adjourn. Yet, here we stand with a carefully crafted, well reasoned, bill that has the unanimous support of the conferees. The fact that we have been able to achieve such a level of success is due not only to the dedication of all involved in the conference, but, more importantly, to the commitment of the Congress and the American people to the goals of the Clean Water Act.

Since the major rewrite of the current program in 1972, the Clean Water Act has been extremely effective in cleaning up our most precious natural resources—our lakes, rivers, and streams. In the early seventies, the country's attention was focused on the deplorable condition of our water resources. Fish could not survive in the rivers that ran along our cities. Lake Erie was being destroyed through sewage, industrial contamination, and trash. A waterway in Texas, polluted with chemical and industrial waste, actually caught fire.

The American people knew something had to be done and done soon. If we failed to act, our children would not be able to enjoy the pleasure of boating on our bays and estuaries, the solitude and serenity of fishing on a secluded trout stream, or the pure fun of swimming in an old fashioned swimming hole.

In response, the Congress undertook a major effort to reclaim our water resources. By an overwhelming margin, the Congress passed the Federal Water Pollution Control Act of 1972. The goal of the Act was to reduce and ultimately eliminate, if at all reasonably achievable, all discharges of pollutants from municipal sewage systems, industrial plants, and other sources. To achieve that end, the 1972 act called for a major national commitment to clean water on two fronts. First, the Congress authorized a regulatory program to ensure that discharges into navigable waters employ sophisticated technologies to remove harmful pollutants. Second, the Federal Government promised to assist State and local governments with a greatly expanded grant program to allow construction of primary and secondary treatment of sewage.

While we have not been able to achieve our ultimate goal, we have made considerate progress. We have halted the rapid deterioration of water quality, and in some places, actually restored once fouled water to relative purity. However, in a number of areas water quality is still in decline. The Chesapeake Bay, for example, is losing ground against toxic chemicals and non-point source pollution. Our lakes continue to die from a variety of sources, most prominent of which are high acidity and phosphorus.

Despite the "mid-course corrections" by Congress in 1977 and 1981, the regulatory and grant programs of the Clean Water Act still require some fine tuning and improvement to allow us to better respond to continuing problems.

Mr. Speaker, the conference report accompanying S. 1128 represents a united effort to further refine the underlying act and fashion a stronger, more efficient, more effective approach to ensuring cleaner water for all Americans. The legislation we are recommending continues a number of existing programs of the Federal Water Pollution Control Act and also establishes new important authorities which will help meet the goals of the act in a rational, feasible way.

Under the Federal Water Pollution Control Act, the U.S. Environmental Protection Agency [EPA] is required to establish water quality criteria, technology-based effluent limitation guidelines, pretreatment standards, new source performance standards and a national permit program to regulate the discharge of pollutants. A grant program for construction of publicly owned treatment works provides the "carrot" for communities to reach the levels of treatment mandated in the law. States are given the responsibility for developing water quality management programs and for setting water quality standards. The act's technology-based limitations prescribe minimum standards of performance for municipal and industrial dischargers without regard to the quality of receiving waters. Water quality standards, by contrast, identify intended uses of particular water bodies and, on the basis of water quality criteria developed by EPA, set forth the biological and chemical conditions necessary to sustain those uses.

Under the act, direct dischargers of pollutants are classified as either point or non-point sources. To deal with point sources, the Clean Water Act provides for the National Pollutant Discharge Elimination System [NPDES] which incorporates and applies effluent limitations in individual permits to both municipal and direct industrial dischargers. Under these permits, dischargers are subject to both technology-based treatment requirements and, where necessary to protect a designated use, additional controls based on water quality standards.

Technology-based standards also deal, in part, with pretreatment of industrial wastes from facilities that discharge into municipal sewer systems instead of directly into a particular water body. These facilities are refered to as "indirect dischargers." To prevent insufficiently treated toxic pollutants from passing through a municipal treatment works or from interfering with the operation of the treatment works, technology-based effluent "pretreatment" limitations are applied. Delays in getting this program in place and the potential negative impact on already well-performing local pretreatment programs have been continuing problems.

Technology-based does not mean that the Agency prescribes the technology that must be used. Rather, EPA reviews the various treatment techniques presently in use or available in each industrial sector to determine what limitations are achievable using available methods. Once EPA adopts effluent guidelines for a particular industry, each company or plant can use any method it chooses to achieve the effluent limitations required under the guidelines. In practice, however, this range of choice is limited by the availability of technology and its effectiveness in removing pollutants.

The 1972 amendments to the act directed EPA to establish a minimum level of technology-based standards for publicly owned treatment works [POTWS] based on secondary treatment as defined by the Agency, and to establish best practicable technology currently available [BPT] standards for industrial categories. Both are uniform national standards and had a compliance date of July 1, 1977. Under the 1972 amendments, EPA was also directed to establish a second level of control standards for industrial categories, based on best available technology economically achievable [BAT], to be complied with by July 1, 1983.

The 1972 amendments' control strategy for toxic pollutants required EPA to develop pollutant-specific effluent standards to be applied to all industrial categories regardless of technological or economic achievability. These effluent standards for toxic pollutants were to be based on the nature of the pollutant rather than on the technologies available to treat those pollutants. The 1972 act instructed EPA to, first, identify toxic pollutants, and then to issue effluent standards for those pollutants.

These initial provisions for the development of toxic pollutant standards proved to be cumbersome and time consuming. During the 5-year period immediately following passage of the 1972 amendments, EPA only managed to produce effluent standards for six toxic pollutant standards. The Agency was sued by several citizen groups and, as a result of the suit, a consent decree, commonly referred to as the NRDC consent decree, was entered into in June 1976.

In 1977, Congress passed amendments to Public Law 92-500 in the form of the Clean Water Act amendments of 1977. The new act codified many of the provisions of the 1976 decree. It classified types of pollutants into conventional pollutants, toxic pollutants, and non-conventional polluants. Conventional pollutants include those traditionally controlled by wastewater treatment systems, including biochemical oxygen demand [BOD], oil and grease, suspended solids, pH and fecal coliform. For industrial control of these traditional pollutants, Congress established separate technology-based control standards referred to as best conventional technology [BCT]. Toxic pollutants include the 65 pollutants and categories of pollutants identified in the NRDC consent decree and section 307(a) of the act. Further subcategories of this number have brought the total to over 120 pollutants. Nonconventional pollutants include pollutants not otherwise designated, such as phosphorus, nitrogen, and ammonia.

New compliance deadlines were also established under the 1977 amendments. BAT for toxic pollutants and BCT for conventional pollutants were required to be achieved by all industrial direct dischargers by July 1, 1984. BAT for nonconventional pollutants was to be acheived no later than July 1, 1987, with the possibility of environmental waivers under certain circumstances.

The construction grants amendments of 1981 significantly modified the program for Federal funding of sewage treatment plants that had been in the act since 1972. In 1981, the annual authorized funding level for the program was reduced from $5 billion per year to $2.4 billion per year. Under the 1981 amendments, what had been 75 percent Federal funding was reduced to 55 percent in October 1984, and certain categories previously eligible for funding, such as collector sewers, became grant eligible only where a State's Governor chose to fund them under a 20-percent discretionary authority.

During this 99th Congress, the bill passed by the House, H.R. 8, built on this background, making changes where needed and reinforcing existing parts of the act in order to more efficiently achieve our real goal; maintenance of the highest practicable instream water quality throughout the Nation to support the many uses of that water by the American people.

Generally, H.R. 8 continued the $2.4 billion annual authorization for construction grants through fiscal year 1990 and authorized a new separate $9 billion capitalization grant program to enable States to create revolving funds to help their communities construct needed sewage treatment plants; $3 billion of the new State revolving fund authorization was provided for fiscal years 1986 through and including 1990. The House bill also extended the complance dates for achieving the best available technology [BAT] and best conventional technology [BCT] requirements to 3½ years after effluent guidelines are promulgated by EPA. These extensions reflect the delays which have occurred in the required promulgation of the effluent guidelines.

In addition to these provisions, the House bill, H.R. 8, provided for, among other things:

A 5-year reauthorization of a number of existing programs; a new non-point source control program; expanded authority for the Governor to elect to use the existing 20-percent discretionary funding under the States' construction grant allotment for nonpoint source projects; new authority for administrative civil penalties; authorization for 10 year National Pollutant Discharge Elimination System (NPDES) permits in narrowly-proscribed and appropriate circumstances; partial program delegation to the States; continued eligibility for Combined Sewer Overflows (CSO's) and collector systems; a provision exempting agricultural stormwater discharges from the definition of a point source; specific authorization to issue effluent limitation modifications based on Fundamentally Different Factors [FDF's]; required pass-through of section 205(j) grants to substate planning organizations; a study of the effectiveness of the section 307 pretreatment program for industries discharging into publicly owned treatment works; provisions to study and address certain specified groundwater problems; and new authority to treat qualifying Indian tribes as States under certain provisions of the Clean Water Act.

The Senate-passed version of this legislation has many similarities to the House-passed bill. It also contains a number of significant differences.

The Senate bill, S. 1128, as originally passed by the Senate, also continued funding of the construction grants program through fiscal year 1990. Authorized funding for the program in fiscal years 1989 and 1990 under the Senate bill, however, dropped from the current level of $2.4 billion to $1.2 billion per year. The Senate also provided authorization for funding State revolving loan fund programs, although at a level that is $600 million less than the level provided for under the House-passed bill. The Senate also extended the compliance dates for BAT and BCT but with an outside date of July 1, 1988. Other key provisions of the Senate bill are:

A 5-year reauthorization of only those programs which have received funding in the past few years; a new nonpoint source program similar to the House bill's program; authority for a State to shift all of its construction grant funds to the new State revolving loan fund program; new authority for administrative civil penalties, similar to that authorized in the House bill; severe limits on EPA's authority to issue fundamentally different factor modifications; more narrowly drawn provisions relating to the treatment of Indian tribes; no provisions authorizing 10 year permits; no new initiatives in the area of groundwater contamination; and no exemption for agricultural stormwater discharges.

The conference report we bring to the House today represents a balance of the interests of the House and Senate and, to be perfectly honest, I believe is a better product than either of its two predecessor bills. The result is legislation that ensures full protection of the environment in a way that adequately protects those who bear the cost of the required protective measures.

Under the conference substitute, the Construction Grant Program would continue at the current annual authorization level of $2.4 billion through fiscal year 1988. Thereafter, the program authorization level is reduced to $1.2 billion per year until the program is eliminated, beginning in fiscal year 1991. This adopts the funding level in the Senate bill and represents a responsible approach to a total phaseout of the Construction Grant Program.

Mr. Speaker, we cannot just walk away from communities that have not received grant funding because, quite frankly, they have polluted less. If we did nothing more than discontinue the Construction Grants Program sometime in the future, this improper result would occur. The conferees' solution to this problem was to provide the same type of transition financing mechanism contained in both House and Senate bills. That mechanism, now commonly referred to as State revolving fund capitalization grants, originated in the 98th Congress in the House-passed version of this legislation. After a year-long study by EPA, the counterparts in the Senate included authorization for State revolving fund grants in their bill, improving on some of the original House concepts. The conference report provisions are the end product of this evolutionary process, and the new State revolving fund authorities we bring to you today will hopefully put the States in a position a few years hence to adequately fill the financial assistance void that would otherwise be created by phasing out the Construction Grants Program.

To assist in the phaseout of the Construction Grant Program, we are calling for funding for a new Revolving Loan Program. Revolving loan funds have been tried in a number of States, including my State of Minnesota, and found to be an extremely effective way to spend scarce resources in a way that broadens our ability to achieve the act's purposes. Under this program, the Federal Government will help provide seed money to establish State revolving funds which will be used to help local communities finance needed wastewater treatment facilities. Federal moneys made available for these funds would be subject to certain restrictions on their use, as are moneys provided through the Construction Grant Program. As these moneys are repaid into the fund, the restriction on how the funds can be used would be eliminated, thereby allowing the States greater flexibility and freedom in financing municipal wastewater treatment programs.

Mr. Speaker, one of the other central issues in the conference had less to do with the level of funding for the Construction Grant Program than it did with how the money is to be distributed to individual States—the allotment formula. The House bill continued the existing formula for distributing grant funds. The Senate bill, however, contained a new formula that was totally unacceptable to the House and that would have had States represented by a majority of the Members of the House receiving reduced shares of Construction Grant Program appropriations. My State of Minnesota stood to lose 15 percent of its annual allotment in the first 3 years and 20 percent in the last 2 years of the program under the Senate formula.

I was extremely pleased that the conferees agreed to adopt an allotment formula substantially different from that in the Senate bill, one much closer to the House formula, which is fair to all sides and more reflective of need. Funding for the overwhelming majority of States stays at or near the level of funding under the current law. Where there are changes up or down, they are generally slight. For example, my State of Minnesota will get a slightly lower allotment than under current law, but by only $350,000—a change of less than 1 percent of the State's annual allotment of almost $45 million. I view this as a major victory not only for my home State, which would have lost $9 million per year under the Senate formula, assuming an appropriation of $2.4 billion, but also as a major victory for the position of the House on this issue.

Mr. Speaker, the conference report also calls for a major new program to address the serious problems posed by nonpoint source pollution. This initiative is in recognition of the fact that pollution from nonpoint sources contributes as much as one-half of all pollution affecting our waters. Under the program, States will be called upon to establish nonpoint source programs which identify waters contaminated in whole or in part by nonpoint sources and to develop management plans to deal with such pollution.

Under these management plans, the States would develop best management practices [BMP's] which are intended to be the primary water quality improvement and water quality compliance mechanism. Water quality standards established under section 303 of the act would be used to determine where nonpoint source management programs are necessary and assess the overall effectiveness of the nonpoint source management program, including BMP's, in achieving the goals of the act. Where water quality standards are not achieved, the BMP's may need to be reviewed and updated in the State Water Quality Management Program.

The bill authorizes a total of $400 million to assist States in setting up their nonpoint programs. In addition, 1 percent of a State's allotment under the Construction Grant Program or $100,000, whichever is more, would be set aside to be used for nonpoint source pollution management. Furthermore, States with greater needs in the area of controlling this kind of pollution could use up to 20 percent of the State's construction grant funds for nonpoint source problems. This increased flexibility will allow States to better target Federal funding to where it will do the most good.

Mr. Speaker, under the provisions of the conference report, a strengthened and improved Clean Lakes Program under section 314 is reauthorized at an annual funding level of $30 million. In addition, $15 million is authorized for cleanup of acidified lakes and a $40 million special demonstration program is established for cleanup of seven specified lakes. One of the lakes named in the bill is Sauk Lake at Sauk Centre, MN. Funding under this demonstration program will allow EPA to implement measures to restore this important water body to its once pristine condition, and I am particularly pleased that the conferees were able to agree with me as to the pressing need for this new lake cleanup program.

Another provision which has been of particular interest to me has been the study of pretreatment standards applicable to industries discharging into publicly owned treatment works. I, for one, have had reservations concerning the implementation of mandatory uniform categorical pretreatment requirements under section 307(b) of the act. In my view, communities need the flexibility to develop pretreatment requirements which are tailored to the particular treatment processes employed in their communities and the character of waste discharge into their sewage treatment plants. I believe that, rather than attempting to solve a problem which has countless variations and nuances at the national level, it may be possible to do a better job—both with respect to protecting the environment as well as with respect to avoiding treatment for treatment sake—by allowing the problem to be dealt with through locally developed equivalent alternative pretreatment programs.

Accordingly, I fought for an amendment on the House floor authorizing a demonstration program pertaining to a limited number of locally developed pretreatment systems. Under my amendment, communities which achieve pretreatment at least equivalent to that required under national standards but which employ a method of pretreatment different from the standards mandated under section 307(b) would be exempt from the national standards. The amendment was not approved by the House. However, the House did approve authorizing EPA to conduct a study of this idea and the conference substitute retains this study requirement. The study will examine the adequacy of information on industrial toxic discharges into POTW's, POTW removal efficiency, alternatives to categorical pretreatment, and the adequacy of Federal, State, and local authorities to establish, implement, and enforce alternative approaches. I believe that the results of this study, due in 2 years, will demonstrate that a more flexible approach can be implemented without adverse environmental effects. If not, at least we will have the reasoned information we need to validate our current practices.

Mr. Speaker, another significant issue addressed in the conference report relates to exemptions contained in the House and Senate bills for stormwater discharges. Under current judicial and administrative interpretations of the law, businesses and municipalities that channel ordinary stormwater and discharge it into a navigable water would be required to obtain an NPDES permit for those discharges.

The House and Senate crafted differing exemptions from this requirement to allow EPA and the States to focus their attention on the most serious problems. The conference substitute adopts a new approach, incorporating and building upon the elements of both bills. With respect to municipal separate storm sewers, the bill provides that large systems—those serving populations of over 100,000—would be subject to a permit requirement, phased in over the next few years. The conference report streamlines and phases in the permit requirements in a way that ensures that the largest systems are dealt with first and at a realistic pace. The compromise reflected in the conference-adopted language represents a balanced and targeted approach to dealing with municipal stormwater discharge problems, while at the same time establishing mechanisms that will be useful for purposes of addressing less serious stormwater discharge pollution situations after the highest priority environmental problems are solved. The provision is meant to provide relief where it is appropriate, to cities without serious stormwater pollution problems, while providing EPA and the States with the time and knowledge they need to properly address this major national water quality need.

The conference report does not provide a specific permit exemption for stormwater discharges associated with industrial activity. A discharge is associated with industrial activity if it is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. Discharges which do not meet this definition include those discharges associated with parking lots and administrative and employee buildings.

Mr. Speaker, the conference report also contains a number of other significant improvements in the Clean Water Act. There are initiatives for addressing toxic hot-spot problems and the increasing problem of ground water contamination. In addition, the existing exemption for return flows from irrigated agriculture is expanded to include agricultural stormwater discharges.

One of the most significant provisions of the conference report combines concepts in both the House and Senate bills limiting the authority of the Administrator to issue fundamentally different factor modifications. The conferees agreed to place certain limitations on EPA's FDF authority in an effort to encourage dischargers to be forthcoming with necessary information when EPA is in the process of establishing applicable effluent guideline regulations. The conferees also devised the restrictions contained in the conference report on this issue in order to expedite decisionmaking with respect to FDF applications that are filed. We took these actions in an effort to narrow the FDF modification opportunity in such a way as to avoid rewarding recalcitrant or otherwise uncooperative FDF applicants.

A few additional points of clarification are necessary on this matter. First, the fear of recalcitrant or uncooperative FDF applicants was more a theoretical than an actual one. No specific example was presented that I can recall of an FDF modification application being used for the sole purpose of avoiding or postponing compliance with properly established effluent guidelines. Second, the conferees recognized the extremely important role over the past 15 years of Clean Water Act regulations that the availability of receiving an FDF modification has played in various courts, including the U.S. Supreme Court's, decisions to uphold effluent guidelines being challenged for constitutional or other reasons. We expect EPA to continue to utilize FDF modifications, where appropriate, to protect the rights of unique or improperly considered dischargers, while not delaying promulgation of needed effluent guidelines. Third, we expect to continue to allow applicants who have not had a reasonable opportunity to submit necessary information to receive FDF modifications. This concept, added to the conference report from the House-passed bill, is meant to protect the rights of responsible applicants to be considered for FDF modifications. Examples might include a discharger who, while knowing of an applicable relevant rulemaking, had no reason to know until the final rule was issued that certain data would be relevant to the specific nature of the final regulations. It might also include a discharger who knew of a pending rulemaking but could not submit needed data showing a fundamental difference because that data could not be generated until after the final rules were promulgated.

Mr. Speaker, as with fundamentally different factor modifications, the conferees agreed to placing new limits on EPA's authority to issue section 301(g) nonconventional pollutant variances. As you know, in addition to conventional and toxic pollutants there exists a large number of pollutants about which there may not be sufficient data to determine their effect on human health and the environment. The 1977 amendments to the Clean Water Act recognized this and established a third category known as nonconventionals—section 301(g) in order to deal with those unknown pollutants. Such substances are to be treated at the BAT level of treatment. However, the provision acts as a safety valve and if, after further investigation it is determined that a lesser level of treatment will not cause the substance to interfere with the water quality the Administrator is authorized to consider such a substance for a waiver from the BAT requirements.

Under the new conference report provision relating to 301(g) variances, when the Administrator is satisified as to the availability of data and test methods regarding such a substance, he should be able to determine if such a substance is toxic, in which case he is required to add it to the 307(a) list, or he may determine that, in certain circumstances or in certain trace amounts, the substance could qualify for consideration for a waiver from the BAT level of treatment as a nonconventional pollutant. In order to grant a section 301(g) variance, however, the Administrator must always follow the new procedural rules set forth in the conference substitute.

Finally, Mr. Speaker, I would be remiss if I didn't take a moment to thank the dedicated and capable staff that have been instrumental in crafting this legislation. On our side of the aisle, I want to thank John Doyle, Gabe Rozsa, Ben Grumbles, and Kathy Guilfoy for all of their hard work and assistance. I also want to express my appreciation to Errol Tyler, Dave Smallen, Ken Kopocis, Randy Deitz, and Charlotte Miles, staff on the majority side of the aisle. Particular thanks should be given to Dave Mendolsohn and Bob Bergman with the Office of Legislative Counsel. And I also want to take a moment to thank the Senate staff who have helped develop this excellent bill. I want to mention, in particular, Bob Hurley, Ron Outen, Phil Cummings, Jeff Peterson, Jimmy Powell, and Steve Schimberg for their long hours and patient cooperation as we worked together to craft legislation in which we could all take pride. And last, but hardly least, I want to thank all of the people at EPA who were so responsive to our requests for information and so dedicated to helping us work out strong and fair compromises in this conference report.

One other person, Mr. Speaker, deserves special recognition on this special day. A person who, because of his untimely death earlier this year, is not physically with us today but whose presence is, and will continue to be, reflected in all of the better provisions of this conference report. I am referring to Peter Perez to whom this conference report is dedicated by the conferees, for his incredible knowledge of the Nation's Clean Water Program and his tireless commitment to its improvement. Peter was a tremendously valuable asset to those of us in Congress who have responsibility for writing our Nation's water quality laws. Whether Democrat or Republican, liberal or conservative, we felt totally able to seek information and analytical work from Peter. We did this knowing that regardless of what Peter may personally have felt about the specifics of any given issue, he would respond in a way that was as reliable, accurate, thorough, and objective as he was personally capable of responding. The level of trust was such that Peter was often asked to leave his home phone number in case problems requiring his assistance arose after normal working hours at night or over the weekend. Very few public servants earn that kind of professional reputation in the course of their careers. Only the best do, and Peter was one of the very best. There could be no more appropriate tribute to Peter and the work he did so well and cared so much about than for us today to unanimously endorse the legislation which so unmistakably bears his mark.

Mr. Speaker, this is an excellent bill. It is one that continues the commitment made by this country to clean water. It is balanced and fair, responsible and sensitive. It allows ut to phaseout the Construction Grants Program in a way that will still allow us to finish the job we began in 1972. It deserves the united and overwhelming support of this body on both sides of the aisle and it deserves the signature of the President of the United States.

Mr. ROE. Mr. Speaker, I yield myself such time as I may consume.

(Mr. ROE asked and was given permission to revise and extend his remarks.)

Mr. ROE. Mr. Speaker, I'm pleased to bring to the floor the conference report on S. 1128, the Water Quality Act of 1986. This legislation is the culmination of years of effort, including an extensive and detailed examination of the Water Pollution Control Program and of measures to make the program more effective and responsible to budgetary considerations.

This legislation contains many provisions which will greatly improve the Federal Water Pollution Control Program. It continues through fiscal year 1990 authorizations for a number of programs in the Water Pollution Control Act, including research activities, training of personnel, forecasting the supply of and demand for occupational categories needed in the water pollution control field, grants to State and interstate agencies to assist in administering programs for water pollution control, grants to educational institutions for programs to train personnel in the operation of water pollution control facilities, grants under section 208 for developing and operating areawide waste treatment management planning processes, grants for the Rural Clean Water Program and the Clean Lakes Program, and the general administration of the Federal Water Pollution Control Act by the Environmental Protection Agency.

The Construction Grants Program, which provides a 55-percent Federal grant for the construction of sewage treatment facilities, is continued at its present level of $2.4 billion per year through fiscal year 1988, and at $1.2 billion per year for fiscal year 1989 and fiscal year 1990. In addition, a new loan program is authorized which provides funds to the States to establish water pollution control revolving funds. These revolving funds are to be used by the States to make low interest loans, subsidize bonds, and take other similar measures in order to assist communities in the construction of sewage treatment works. The States must contribute 20 percent of their own money to these revolving funds.

The authorized amounts for grants for these revolving funds are $1.2 billion per year for fiscal years 1989 and 1990, $2.4 billion for fiscal year 1991, $1.8 billion for fiscal year 1992, $1.2 billion for fiscal year 1993, and $600 million for fiscal year 1994.

The authorizations for construction grants and revolving fund grants are designed to enable the States to capitalize revolving funds during fiscal years 1989 and 1990 when construction grants are still being made. In 1991, the grants for revolving funds are increased to the prior years' total construction and loan grants level, then gradually decreased over a 3-year period. This is intended to provide a transition period during the funding of sewage treatment plants will move from a Federal Grant Program to a State Revolving Loan Fund Program.

The Environmental Protection Agency estimated, in its 1984 needs survey, that the Federal share, under existing law, for eligible treatment plants through the year 2000 is approximately $35.8 billion. This is twice the amount authorized by S. 1128 for construction grants and revolving fund grants. We are optimistic that the combined Construction Grant and Revolving Fund Grant Programs will enable communities to meet the requirements of the act. This is because the revolving funds will provide a continuing supply of funds for assistance. The committee will, however, monitor very carefully the success of this approach, so that it can determine whether the Nation's needs for publicly owned sewage treatment plants will be met on a timely basis.

The legislation also contains a number of other provisions to improve our efforts to restore and maintain the quality of our Nations waters.

A program to encourage and assist States in the control of nonpoint sources of water pollution is established. Approximately 50 percent of the pollution entering our Nation's waters comes from nonpoint sources. In order to achieve adequate water quality it is absolutely essential that we begin to address the very serious problem of nonpoint sources of pollution.

A national policy is established that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of the act to be met through the control of both point and nonpoint sources of pollution.

Federal grants of up to 60 percent are authorized over a period of 4-years in a total amount of $400 million. States are required to identify waters which cannot reasonably be expected to attain water quality standards without additional controls of nonpoint source pollution, and to identify management practices for categories, and subcategories of nonpoint sources and particular nonpoint sources which add significant pollution to waters. The States also are required to submit management programs to EPA for approval. Implementation grants are available to States with approved programs. Interstate management conferences are provided for where pollutants in one State are preventing water quality standards from being attained in another State.

The clean lakes provision of the Federal Water Pollution Control Act, which establishes a Grant Assistance Program to improve the water quality of lakes, is extended. In addition, new provisions are added to increase the effectiveness of the program. Included is a demonstration program to develop technologies for the control of pollutants to enhance lake water quality, to control nonpoint sources of lake pollution, to demonstrate environmentally preferred technologies for removal and disposal of contaminated lake sediments, to mitigate the adverse effects of acidification of lakes, and construction and evaluation of techniques to prevent the deposit of sediment in lakes.

There is a provision for the development and implementation of individual control strategies to achieve compliance with applicable water quality standards where it is determined that such compliance will not result from the application of best available technology and best conventional technology.

Penalties for violation of the act are increased, and a provision authorizing the assessment of administrative penalties is included. These are designed to substantially increase EPA's enforcement capabilities to ensure compliance with the act.

Another important provision concerns management and control of municipal and industrial storm water discharges. Section 405 of the conference agreement establishes a mechanism to address the major problems associated with discharges from storm sewers through a permitting procedure and the development and implementation of management practices, control technologies, and design and engineering methods.

For industrial and large municipal discharges—storm sewer systems serving a population of 250,000 or more—not later than 2 years after the date of enactment the Administrator must establish regulations setting forth permit application requirements. Applications for permits must be filed within 3 years after the date of enactment and the Administrator or the State, as the case may be, must issue or deny such permits within 4 years of the date of enactment. These permits must provide for compliance as expeditiously as practicable but in no event later than 3 years after the date of issuance of the permit. For discharges from storm sewers serving a population of 100,000 or more, the Administrator must establish permit application requirements within 4 years of the date of enactment. Applications for permits must be filed no later than 5 years after date of enactment, and the Administrator or the State, as the case may be, must issue or deny the permits within 6 years after the date of enactment. The permits must provide for compliance as expeditiously as practicable but in no event later than 3 years after the date the permit is issued.

Permits for other discharges are not required prior to October 1, 1992, except for those which the Administrator or the State determines contribute to a violation of a water quality standard or are a significant contributor of pollutants to waters of the United States.

Permits for discharges from municipal storm sewers may be issued on a system or jurisdictionwide basis and must include the requirement to effectively prohibit non-storm-water discharges into storm sewers. In addition, they must require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control technologies and systems, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of pollutants.

Section 405 also directs the Administrator, in consultation with the States, to conduct a study to identify storm water discharges for which permits are not required prior to October 1992 to determine the nature and extent of pollutants in the discharges, and to establish procedures and methods to the extent necessary to mitigate impacts on water quality. This study, identifying discharges and determining the nature and extent of pollutants, is to be submitted to Congress by October 1, 1988, and the study and report establishing procedures to control discharges must be submitted to Congress by October 1, 1989.

Finally, not later than October 1, 1992, the Administrator, in consultation with States and local officials, is to issue regulations which designate additional storm water discharges based on the study to be regulated to protect water quality and is to establish a comprehensive program to regulate these additional discharges.

The control of storm water discharges to protect the quality of the Nation's waters is a vast undertaking which, under existing law, would require an estimated 1 million permits. The provision in the conference agreement establishes an orderly pocedure which will enable the major contributors of pollutants to be addressed first, and all discharges to be ultimately addressed in a manner which will not completely overwhelm EPA's capabilities.

Section 301(g) of the act allows EPA to grant modifications to effluent limitations for nonconventional pollutants if certain conditions are met. The bill limits the availability of such modifications to five pollutants: Ammonia, chlorine, color, iron, and total phenols. These are substances for which EPA has sufficient data to properly assess a request for a modification of applicable effluent limitation. The provision in the bill provides for additions to the list of these five pollutants, but only if

EPA first determines that a pollutant proposed to be added does not meet the criteria for listing as a toxic, and then determines that adequate test methods or sufficient data are available to make the determination required for the granting of a modification. In addition, strict deadlines are placed on the filing of petitions to add a pollutant to the section 301(g) list, applications for a modification, and EPA's approval or denial of these requests.

A strong "antibacksliding" provision is included, which strictly limits the situations in which effluent limitations in BPJ best [professional judgment] permits and water quality based permits may be made less stringent. As a general rule, effluent limitations established in a BPJ permit may not be modified to reflect less stringent requirements in subsequently issued effluent limitations. Exceptions are provided to this general rule, which permits less stringent effluent limitations if material and substantial alterations or additions to the permitted facilities occurred after permit issuance, information is available which was not available at the time of permit issuance, technical mistakes or mistaken interpretation of law were made, there are events over which the permittee as no control, or a permit modification has been granted. The exception for new information or technical mistakes or mistaken interpretations of law do not apply to any revised waste load allocations except where the cumulative effect of these revised allocations results in a decrease in the amount of pollutants discharged and the revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants in order to comply with the requirements of the act or for reasons unrelated to water quality.

For waters where the water quality standard has not been attained, any effluent limitation based on a total maximun daily load may be revised only if the cumulative effect of all of the revised effluent limitations will assure the attainment of the water quality standard. Where the quality of these waters exceeds or equals levels necessary to protect the designated use, any effluent based on a total maximum daily load or water quality or other standard may be revised only if the revision is subject to and consistent with the antibacksliding policy established under section 303.

Another provision of this legislation concerns the granting of a variance from the requirements of an effluent limitation if the owner or operator of a facility demonstrates that the facility is fundamentally different with respect to the factors considered by EPA in establishing the effluent limitation. The bill narrows and strictly defines the circumstances under which a fundamentally different factors [FDF] variance may be granted. The application for a variance must be based solely on information and supporting data submitted to EPA during the rulemaking or establishment of the effluent limitation, or based on information the applicant did not have a reasonable opportunity to submit during the rulemaking. An application for a variance must be submitted within 180 days after establishment of the effluent limitation, and EPA must approve or deny the application within 180 days after the application is filed.

Another significant provision of the conference agreement is that establishing a National Estuary Program. This provision provides for management conferences to develop comprehensive management plans for estuaries where EPA determines, on its own initiative or upon nomination by a State, that the attainment or maintenance of water quality in the estuary requires the control of point and nonpoint sources of pollution to supplement existing controls of pollution in more than one State. The purposes of such a management conference are to assess trends in water quality and uses of the estuary, collect and assess data on toxics, nutrients, and natural resources in estuarine zones to identify causes of environmental problems, develop a comprehensive conservation and management plan to restore and maintain the chemical, physical, and biological integrity of the estuary, develop implementation plans to be carried out by the States, and monitor the effectiveness of actions taken pursuant to the plan.

The conference agreement on S. 1128, the Water Quality Act of 1986, represents a major step forward in our efforts to improve and preserve the quality of our Nation's waters. In the area of municipal treatment of wastes, the phasing out of the Construction Grants Program, together with the capitalization grants for State revolving loan funds will provide a foundation for the continuation of efforts at the State level to achieve compliance with the requirements of the act with respect to municipal treatment. The program for the regulation and control of storm water discharges will provide an orderly means of bringing these sources of pollution under control. Necessary flexibility will be provided in the establishment and implementation of effluent limitations to address unique situations without sacrificing improvements in water quality. This legislation is a sound and reasonable approach to the Nation's need to improve and maintain that water quality which is essential to fish and wildlife resources and the public health and well-being of that Nation. I urge my colleagues to approve this conference agreement.

Mr. STANGELAND. Mr. Speaker, I yield such time as he may consume to the gentleman from Arkansas [Mr. HAMMERSCHMIDT].

(Mr. HAMMERSCHMIDT asked and was given permission to revise and extend his remarks.)

Mr. HAMMERSCHMIDT. Mr. Speaker, I rise in strong support of S. 1128, the Water Quality Act of 1986.

We have before us a compromise bill which, in reality, reflects the years of hard work on not only H.R. 8 and S. 1128, but those clean water reauthorization measures drafted in the past.

Today's agreement is due in no small measure to the tireless efforts and strong leadership provided by our Public Works and Transportation Committee Chairman JIM HOWARD; our ranking Republican of the full committee GENE SNYDER; BOB ROE, chairman of the Water Resources Subcommittee; and ARLAN STANGELAND, the subcommittee's ranking minority member. This is truly a landmark bill and one that is both environmentally strong and fiscally responsible. This bill is a strong, efficient and balanced approach to our goal of ensuring cleaner water for all Americans.

The bill provides 5-year extensions for a number of important existing programs and includes several new initiatives to address those funding needs for State and local governments as they seek to reduce or eliminate the discharge of pollutants into our Nation's waters. I would like to bring a couple of those initiatives to the attention of our colleagues.

The grant program for sewage treatment plant construction will be continued and gradually phased out. Through fiscal year 1988 that program's funding would continue at $2.4 billion annually. After that, the program would be reduced to $1.2 billion annually until the program is eliminated, starting in fiscal year 1991.

Although the construction grant program is being phased out, the bill authorizes a new grant program to help States set up revolving funds to assist local communities in financing needed wastewater treatment facilities. The funds can be used for loans, guarantees, interest subsidies, and other nongrant purposes.

Under the new program, States will be granted greater flexibility in financing needed municipal wastewater treatment programs. This new program insures that those communities heretofore too far down on a State's priority list will still be able to get help in meeting their requirements under the act.

In another important new initiative, the bill creates a major new grant assistance program to help States control nonpoint source pollution.

This is an extremely important new initiative, given current information that nonpoint sources are contributing up to 50 percent of the water pollution in some States.

For a very modest amount—$400 million over 4 years—this new program will give States an added incentive to develop and implement nonpoint source management programs to reduce the several billion dollar cost we now pay after the damage has been done.

A study by the conservation foundation several years ago indicated that the total economic costs of sediment and pollutants associated with erosion are over $3 billion per year. Some of these costs, according to the foundation, include $100 million for increased water treatment, $70 million for damages to inland commercial fisheries, and $120 million in damage to recreational opportunities.

But the costs are spread farther than this. The Corps of Engineers spends over $300 million each year to dredge harbors and shipping channels, removing sediment that might never have entered the water if nonpoint source controls had been in place. Sediment also fills in our reservoirs, robbing us of drinking water supply and flood control capacity.

Granted, with $400 million we aren't going to control all erosion. We are going to give the States the incentive to begin to manage nonpoint source pollution from all sources, including eroding streambanks and sheet runoff from fields.

Another new initiative actually builds upon an existing program in the act. Section 314 of the act authorizes assistance to States in restoring water quality in the Nation's lakes. The conference report includes a new demonstration program to expand on the existing clean lakes effort by demonstrating techniques to achieve lake water quality improvement. One of the lakes identified is Beaver Lake in Arkansas. The approaches that will be used at Beaver Lake will be able to be used elsewhere, thereby benefiting the country as a whole.

The bill will also remove current obstacles to the use of funding provided by Farmers Home Administration for Clean Water Act construction grant projects. Many rural communities would not be able to finance the substantial cost of meeting the act's requirements without use of FmHA funds.

Another important issue which the bill addresses is the problem of insuring that our ground-water resources are adequately protected. Communities around the country face problems caused by pollution of the Nation's aquifers. Accordingly, the bill before us today calls upon EPA to undertake a study of the measures needed to adequately protect water resources at seven specified aquifers, including the sparta aquifer in Arkansas. Because of the growing threat to ground water posed by point sources and nonpoint sources, it is appropriate that we dedicate our efforts to examining how we can best protect this important supply of water for millions of Americans.

Another provision of this bill with which I am particularly pleased is an increase in the rural set-aside program. Under the current law a Governor may set aside 4 percent of the State's construction grant funds to address water pollution problems in rural areas. This is an important provision which insures that our rural communities are not forgotten under the clean water program. The conference report expands the rural set-aside program by requiring that at least 4 percent and not less than 7½ percent of a State's allotment shall be made available for rural problems.

The conference report also contains a number of other important improvements in the Clean Water Act, including initiatives to address the problem of toxic hot spots and the ever-growing problem of contaminated ground water. The bill also revises some of the act's technology compliance deadlines and provides authority for administrative penalties.

Mr. Speaker, this is a strong bill that insures a continued commitment by this Congress and the Federal Government to clean water. I urge my colleagues to give this strong effort by our House and Senate conferees overwhelming support so that the legislation can be enacted at the earliest possible date.

Mr. ROE. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from California [Mr. MINETA].

(Mr. MINETA asked and was given permission to revise and extend his remarks.)

Mr. MINETA. Mr. Speaker, I rise in strong support of this conference report on the Clean Water Act.

There are several items in this conference report that I want to briefly mention, but I must begin by expressing my enormous gratitude and admiration to the two gentlemen from New Jersey, Mr. HOWARD and Mr. ROE.

Their leadership and guidance in bringing this bill to the floor stands as a great accomplishment. Countless obstacles stood in their way, yet they kept at it. To them, the ranking minority members, Mr. SNYDER and Mr. STANGELAND, and their hardworking staffs, I say thank you.

Several aspects of this bill deserve at least a brief mention.

The formula for apportioning the sewage construction grant and loan program funds was a major item in this conference, and I am pleased to say that I think we achieved a compromise that is fair and reasonable to all States.

The question of municipal storm runoff also confronted the conference, but here again I believe the compromise was reasonable and equitable.

And, Mr. Speaker, as the author of the provision to include San Francisco Bay in the National Estuary Program, I am truly delighted to note that this important and fragile national natural resource has been designated a priority item for the estuary program.

Mr. Speaker, this is a fine bill. I will not take the time now to discuss its many other provisions. Let me again congratulate our committee's leadership, and urge my colleagues to support this bill.

□ 1800

Mr. STANGELAND. Mr. Speaker, I yield such time as he may consume to the gentleman from Kentucky [Mr. SNYDER], the ranking member of the full committee.

(Mr. SNYDER asked and was given permission to revise and extend his remarks.)

Mr. SNYDER. Mr. Speaker, it is with great pleasure that I rise in support of S. 1128, the Water Quality Act of 1986.

This legislation is the product of many years of effort by the House and Senate Public Works Committees. Over the years we have reviewed every aspect of the Clean Water Act's provisions, regulatory programs, and administration at Federal, State and local levels. Both the House and the Senate have passed strong reauthorization bills in the past. The conference report before you today is a worthy synthesis of not only H.R. 8 and S. 1128, but also H.R. 3282 and other previous clean water reauthorization bills. It represents a truly workable compromise that will add needed reforms to our Nation's Clean Water Program.

Let me first congratulate the many people who made such valuable contributions throughout this lengthy and arduous process. I want to thank the gentleman from New Jersey, Mr. HOWARD, who serves so ably as the chairman of the Committee on Public Works and Transportation, for his leadership and good judgment on this bill. I also want to congratulate the chairman and ranking minority member of the Water Resources Subcommittee from New Jersey, Mr. ROE, and the gentleman from Minnesota, Mr. STANGELAND, for their tireless efforts, their spirit of cooperation and especially for their comprehensive understanding of the issues. And of course, I would be remiss if I did not thank the able leadership of the Environment and Public Works Committee in the other body for its guidance and cooperation.

By working together, we have forged a truly landmark piece of legislation that deserves the support of Congress and the administration. S. 1128 makes far-reaching changes to the Clean Water Act's Regulatory Program. It also makes some "fine-tuning" adjustments to reflect years of testimony from the administrative agencies, the regulated community, and citizens groups. Perhaps most importantly, the bill addresses essential funding needs of State and local governments, but does so in a fiscally responsible manner. In short, Mr. Speaker, S. 1128 greatly increases the protection of the environment and public health, while balancing the need to recognize other important goals.

Last Congress' Clean Water Reauthorization Bill, H.R. 3282, and this year's bill, H.R. 8, passed overwhelmingly. S. 1128, as amended in conference, incorporates much of H.R. 8 and H.R. 3282. I believe the resulting compromise is the strongest, most workable clean water legislation yet. The conference report's authorization levels are significantly lower than those provided for in previous House bills. Despite these reductions, S. 1128 will not result in any significant cutbacks for communities. The conference report will continue funding of Clean Water Act programs which are not less than the current funding.

S. 1128 will also establish new initiatives in a number of areas to assist the Nation in achieving the act's goals of reducing or eliminating the discharge of pollutants into our Nation's rivers, lakes and streams. Specifically, the bill establishes a new, expanded program for control of nonpoint source pollution and a new grant program to assist States in setting up revolving funds to finance future capital improvements by municipalities. This latter initiative will provide a more flexible system of funding and will ultimately replace the Construction Grant Program. State revolving funds will be available for use by localities to help pay for improvements needed to achieve water quality objectives without the myriad of Federal procedures and requirements applicable under the Construction Grant Program.

Mr. Speaker, allow me to highlight some of the regulatory amendments and construction grant amendments of the bill.

REGULATORY AMENDMENTS

One of S. 1128's most valuable contributions is its new and comprehensive nonpoint source pollution control program. The Clean Water Act, as written in 1972 and amended in 1977 and 1981, focused on point source discharges of pollution. Over the years, however, new information has indicated that nonpoint sources contribute up to 50 percent of the water pollution in some States. Thus, the conferees establish a new national policy to develop and implement programs for controlling nonpoint sources or pollution. New section 319 of the Clean Water Act will provide for State assessment reports, management programs, optional interstate management conferences, and needed Federal funding. With this new emphasis on nonpoint sources of pollution, we should be able to wage a more comprehensive and complete assault on water pollution throughout the Nation.

A related issue involves stormwater discharge permits. The conference report retains important provisions of the House bill on agricultural discharges and expands upon municipal stormwater provisions addressed inadequately by the House- and Senate-passed bills. The conferees retained section 37 of the House bill, specifically excluding agricultural stormwater discharges from the definition of point source. In addition, the conferees have extensively revised the stormwater permit provisions for municipalities, recognizing the disasterous consequences that could result if provisions in the House- and Senate-passed bills remained unchanged. The new language will properly reduce the universe of permits required for stormwater from millions to thousands without reducing the protection of the environment. We have established a mechanism that will require permits only where necessary—rather than in every instance. Without these changes, local, State, and Federal officials would be inundated with an enormous permitting workload even though most of the discharges would not have significant environmental impacts.

In the same section of the bill, the conferees have addressed the permitting requirements for industrial stormwater runoff. It is important, however, to clarify that a discharge is "associated with industrial activity" if it is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. Discharge which do not meet this definition include those discharges associated with parking lots and administrative and employee buildings.

The conference report also contains an important provision clarifying the regulatory treatment of stormwater runoff from oil, gas and mining operations. Section 402 of the Clean Water Act is amended to prohibit the administrator from requiring permits for stormwater runoff from mining operations or oil and gas exploration, production, processing, or treatment opertions or transmission facilities except when the runoff is contaminated by contact with the overburden, raw material, or various waste products. With this limitation on the permitting requirements for such stormwater runoff, important oil, gas and mining operations will be able to continue without unnecessary paperwork restrictions, while protection of the environment remains at a premium.

S. 1128 also addresses criminal, civil and administrative penalties for violations under the act. EPA may pursue a violation of the specified statutory provisions by assessing a class I penalty, assessing a class II penalty, or filing an action in court and requesting that the court assess a penalty under section 309(d). In class I actions, EPA may assess a penalty of no more than $10,000 per violation, up to a maximum penalty of $25,000. An informal hearing must be provided upon request of the discharger. In class II actions, EPA may assess a penalty of no more than $10,000 per day for each day during which the violation continues, up to a maximum penalty of $125,000. The discharger has the right to a formal, Administrative Procedure Act hearing.

Under these penalty provision, multiple violations which stem from a single cause should be considered as one "violation" for penalty assessment purposes.

The conference report includes important provisions on clean lakes, research and management of pollution in the Great Lakes, and estuary management conferences. In amending the act's section 314 clean lakes authority, S. 1128 provides for increased environmental protection with the addition of a new demonstration program. I am particularly pleased to see that, throuh ARLAN STANGELAND's able leadership, Sauk Lake in Minnesota is included as one of the projects in this important $40 million demonstration program. The bill also authorizes EPA to conduct demonstration projects related to restoring the biological integrity of acidified lakes and watersheds through liming. In addition, S. 1128 establishes a Great Lakes program office in EPA and a Great Lakes research office in NOAA to develop and implement environmental programs with special emphasis on the control of toxic pollutants. The bill also authorizes EPA to convene estuary management conferences to solve water pollution problems in estuaries throughout the country.

S. 1128 makes numerous changes to improve dramatically the removal and control of toxic pollutants. Toxics present one of the greatest dangers to this Nation's health and welfare. The conference report addresses this increasing concern in numerous areas. For example, EPA is directed to identify toxic pollutants which may be present in sewage sludge and to promulgate regulations and impose conditions in section 402 permits to protect public health and the environment. S. 1128 also contains important provisions relating to water pollution control levels to be achieved after the act's technology-based BPT/BCT/BAT standards have been met. States must submit to EPA lists of navigable waters for which applicable water quality standards are not expected to be achieved after implementation of the best available technology and after pretreatment requirements and new source performance standards are met. States must also propose individual control strategies to reduce the discharge of toxic pollutants. In addition, EPA must develop methods for establishing and measuring water quality criteria for toxic pollutants.

The conference report allows case-by-case modifications of BAT limits for pre-existing discharge from coal remining areas. This is consistent with the concern of the administration and the needs of the coal mining industries. In addition, the amendment ensures careful analysis of environmental concerns by requiring an applicant to demonstrate that the coal remining operation would result in the potential for improved water quality. The conferees specifically agreed to retain the phase "potential for" so that applicants would not face the unreasonable burden of showing actual improvement in every instance.

Another important regulatory issue involves EPA's variance for fundamentally different factors (FDF's). Under current law, a discharger can apply for and receive modifications from otherwise applicable effluent guidelines upon demonstrating that his plant is fundamentally different from the plants upon which EPA based its effluent guidelines. The Supreme Court recently ratified the FDF variance process in Chemical Manufacturers Assoc Versus National Resources Defense Council, Inc., — U.S. — (1985). Today, Congress gives its full support for this administrative created FDF mechanism and provides further direction to EPA.

While it limits the availability of the FDF modification in some instances, the conference report also recognizes the tremendous importance of the variance process to the Clean Water Act's Regulatory Program. For years, Federal courts have articulated many reasons for retaining FDF variances. By establishing variance from nationally applicable effluent limitations guidelines and standards, the FDF modification provides necessary flexibility to nationwide standards and allows necessary challenges to regulations in a non-rulemaking forum. Courts around the country upheld nationally applicable effluent limits specifically because of EPA's FDF variance, which provided a needed "safety valve." See for example *American*

Frozen Food Institute v. *Train* (539 F. 2d 107 (D.C. Cir., 976)) and *Natural Resources Defense Council, Inc.* v. *EPA* (537 F. 2d 642 (2d Cir., 1976)).

In NRDC against EPA, the Court held that the establishment of an FDF variance was a valid exercise of EPA's rulemaking authority pursuant to section 501(A) of the act. The court stated that, in the context of the Clean Water Act, the variance was particularly appropriate:

> The sheer number of point soures potentially subject to regulation and the rapidly approaching statutory deadlines required the EPA to restrict itself in the regulation promulgation process to a representative sampling of plants. It is entirely possible that the resulting regulations will prove ill-suited to some of the unsampled individual plants to which they will be applied in the permit process. Unless the variance clause is established, there is no guarantee that such a defect could be effectively remedied if it occurred. Review of the regulations pursuant to section 509 of the act is not an acceptable substitute. Since the act authorizes informal rulemaking, review of the regulations will tend to be narrowly confined. The petitioner's recommendation that the rulemaking procedure be re-opened at the permit-granting stage is unnecessarily cumbersome. (537 F. 2d at 647.)

Finally, the court warned:

> [N]ot all of the thousands of plants in operation could be expected to fit into prefabricated molds or templates. By specifying a permit procedure, Congress implicitly conferred on the permit-grantor the privilege of continuing the broader regulations in light of the specific type of plant applying for the permit. Without variance flexibility, the program might well founder on the rocks of illegality. (357 F. 2d at 647.)

Recognizing the importance of an FDF variance, the conferees are refusing to limit severely its usefulness or applicability. Thus, the conferees have agreed to many of the provisions in the House bill rather than those in the Senate bill. Under new section 301(n), EPA may issue fundamentally different factors (FDF) variances from national effluent limitations guidelines or categorical pretreatment standards. The FDF application must be based on information which the applicant submitted, or did not have a reasonable opportunity to submit, during the relevant rulemaking. An applicant could satisfy the "did not have a reasonable opportunity to submit" test in the following situations:

First. The discharger knew of the rulemaking, but had no reason to know until the final rule was issued that certain data would be relevant to the specific nature of the final rules as they apply to his facility.

Second. The discharger knew of the rulemaking, but could not submit certain data showing fundmental differences because those data could not be generated until the final rules were issued and tests could be run to assess the expected performance of the facility in complying with the final numerical limits.

Third. The discharger did not know of the rulemaking, due to lack of actual or constructive notice.

I do have some concerns about other regulatory provisions in title I. In certain respects, S. 1128 fails to impose realistic deadlines and requirements or to provide the necessary amount of discretion and flexibility to EPA. As legislators, we must always strive to write laws that are workable and achievable. I am afraid that we have not done this consistently throughout S. 1128.

My greatest concern is over the bill's compliance dates. The Senate-passed bill extended compliance deadlines for priority, conventional, and nonconventional pollutants to "as expeditiously as practicable" but not more than 3 years after the promulgation of effluent guidelines, with an outside date of July 1, 1988. The conference report adopted the Senate provisions, but modified the outside compliance date to March 31, 1989.

This is not a satisfactory—or sensible—resolution. Subsequent information and comments from EPA indicate that the deadline is unrealistic. It does not allow enough time to achieve compliance. Industrial direct dischargers find themselves in an uncompromising situation, since EPA has not yet promulgated final effluent guidelines for various pollutants. Industrial facilities still waiting for guidance from EPA will have very little time to install necessary water treatment facilities. By retaining the March 31, 1989, deadline, I am afraid we are legislating fiction and defying common sense.

I am concerned that the bill's legally enforceable requirements, coupled with the act's citizen suit provisions may ultimately harm the program. The cumulative load of deadlines throughout the bill may set up EPA, States, municipalities, and industries for failure which will, in turn, breed endless litigation and disrespect for the law. We must avoid imposing unrealistic requirements that result in courts—rather than expert agencies—running the Clean Water Act Program. I hope, Mr. Speaker, this new bill will not establish an unhealthy spiral of missed deadlines, lawsuits, congressional distrust, more deadlines, more missed deadlines, more lawsuits to infinity. If it does, then Congress should expect to revisit the whole issue again soon.

The conferees agreed on a new compliance date for achievement of effluent limitations guidelines: As expeditiously as practicable, but no later than 3 years after promulgation of the guidelines, but in no event later than

March 31, 1989. During the discussion of this issue in the conference, it was noted that this deadline could pose a significant problem for some plants in the organic chemicals, plastics and synthetic fibers [OCPSF] industry. Our hearings clearly demonstrate that at least 3 years from promulgation is needed for most plants to comply. The guidelines for the OCPSF industry are currently required, by court order to be issued by December 1986. If the guidelines are issued in December, OCPSF plants would have only 2 years and 3 months of obtain permits and design, construct, install, and operate the equipment necessary to meet the applicable limitations. It therefore appears that some OCPSF plants may fail to comply with their guidelines by the time required, not through any fault of their own, but simply because their guidelines were not issued early enough. Congress and EPA are both aware of their problem. Delay in promulgation of guidelines may make it impossible for some plants and industries to comply with the March 31, 1989, deadline. We agreed to address this problem in the conference report.

EPA told us that if presented with a compliance problem due to delay in guidelines promulgation, they would issue an administrative order to establish a reasonable compliance date for the discharger beyond March 31, 1989. The order would not assess a penalty for the discharger's failure to meet the statutory compliance date. EPA stated that it currently issues such orders to dischargers who are unable, because of delays in guidelines promulgation or permit issuance, to meet the July 1, 1984 deadline in existing law. EPA's statement that it would continue to issue these orders was the major reason for our not seeking to reopen and extend the March 31, 1989, outside compliance date. Issuance of such orders by EPA provides a useful method for remedying inequities suffered by specific plants as a result of the delay in guidelines promulgation. When a plant is issued this type of order, the plant should not thereafter be subject to suit—by EPA, a State, or a citizen—on the basis of its failure to adhere to the statutory compliance date. It is our intent that noncompliance which is not the fault of the plant should not be penalized in any way, whether administratively, legally, or in the eyes of the public.

On another issue, the antibacksliding provision included in the conference report, while designed to ensure that reasonable further progress is made in meeting the goals of the act, is not designed to prohibit industrial growth, nor to penalize those who have production-based permits.

Technology-based limits are often based on the level of production at a facility—pounds per ton. Permittees will continue to be able to increase their production or add to or change their manufacturing processes. They would, of course, still be required to maintain the effluent limitation guidelines—pounds per ton—issued by EPA for the appropriate industrial categories or subcategories as well as meet all applicable water quality standards.

CONSTRUCTION GRANT AMENDMENTS

The funding levels in S. 1128 are both environmentally responsive and fiscally responsible. There is no unwarranted drain on the Federal Treasury in this bill. The level of $18 billion over 9 years for the current Sewer Grant Program and the new State revolving loan fund represents a reasonable compromise and a worthy investment. The wastewater treatment needs of this Nation are steadily increasing. The creative financing in S. 1128 will address these needs, but at the same time initiate the final phase of the transition to state and local self-sufficiency as soon as reasonably possible. Mr. Speaker, this bill signals a movement from the current level of Federal financial involvement to a program focused on increased State and local self-sufficiency; it does not, however, abandon the crucial Federal-State-local partnership that has developed over the years.

One of S. 1128's most innovative proposals is its Revolving Fund Program through which a State will be able to provide financing assistance to its policial subdivisions and, upon repayment, be able to use that money again to construct needed pollution control facilities. These funds can be used for loans, guarantees, interest subsidies, and other nongrant purposes. Under this new authority, many more communities will receive funding for construction of needed wastewater treatment facilities. Countless communities have waited in vain for Federal funding, because they were too low on State priority lists. This new Revolving Fund Program will help those communities meet their requirements under the act.

The conference report also authorizes critically needed projects for improving publicly owned treatment facilities throughout the Nation. For example, the Administrator is directed to grant $250,000 from funds allotted under the act to Taylor Mill, KY for the repair and reconstruction of its publicly owned treatment works. This is an extremely important project, so I am particularly delighted to see it receive proper attention from Congress. S. 1128 similarly provides necessary finding for water quality improvement projects at other municipalities. In addition, the conference report increases the mandatory set-aside for rural States by establishing a floor of 4 percent—with a ceiling of 7½ percent.

With all of these provisions, the entire Nation will stand to benefit.

Mr. Speaker, S. 1128 provides vital funding to States and municipalities and makes farsighted changes to the Clean Water Act's regulatory program. It coordinates governmental and private actions in pursuit of one common goal: Making our waters fishable and swimmable. The conference report addresses the needs of municipalities and State governments, but at the same time recognizes the importance of increasing non-Federal self-sufficiency and decreasing Federal expenditures. In spite of today's budgetary constraints, S. 1128 represents a worthy investment in our Nation's water quality. This bill embodies an approach to environmental protection which is both sensible and environmentally sensitive. S. 1128 is one of the most important environmental laws of the 99th Congress and perhaps of this decade. I urge my colleagues and the administration to support it fully.

Finally, Mr. Speaker, I would be remiss if I did not take this opportunity to thank all of the staff who worked so tirelessly over the years toward passage of clean water legislation. In particular, I would like to thank—and congratulate—John Doyle, Gabe Rozsa, Ben Grumbles, Kathy Guilfoy, Errol Tyler, Ken Kopocis, Randy Deitz, and Charlotte Miles of the Water Resources Subcommittee and Dave Mendelsohn and Bob Bergman of legislative counsel. I would also like to thank the Senate staff, including Bob Hurley, Phil Cummings, Jeff Peterson, Jimmy Powell, Ron Outen, and Steve Shimberg. All of these people worked practically nonstop for months, dedicating countless nights and weekends to make this moment happen. Some individuals endured this lengthy process for over 4 years. Because of their efforts, we have a bill that everyone can be proud of.

Mr. ROE. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from West Virginia [Mr. Rahall].

(Mr. RAHALL asked and was given permission to revise and extend his remarks.)

Mr. RAHALL. Mr. Speaker, I join in the overwhelming support for this bill, the Clean Water Act, and urge my colleagues to accept this conference report. I begin by joining in the commendation for the distinguished chairman of the full committee, my committee chairman, the gentleman from New Jersey [Mr. Howard], the ranking minority member, the gentleman from Kentucky [Mr. Snyder], my subcommittee chairman, whose tenacity has made it possible for this legislation to come to the floor today, and the gentleman from New Jersey [Mr. Roe], and to the ranking minority member of the subcommittee, the gentleman from Minnesota [Mr. Stangeland], I commend for his diligent efforts on this legislation.

Mr. Speaker, after several years of intensive effort, it gives me great pleasure to rise in support of the conference report on S. 1128, legislation to reauthorize the Clean Water Act. Among the many provisons of this bill is one which seeks to provide an incentive to the coal industry to remine abandoned coal mine lands.

It is rare we are able to enact legislation such as this provision which so clearly dovetails efforts to develop our coal resources with those aimed at mitigating environmental damage. Throughout the Appalachian Region abandoned coal mine lands exist which, due to erosion and acidic discharges, pose a serious threat to water quality.

While the 1977 surface mining law created an abandoned mine reclamation program to address this situation, the funds raised from industry to implement reclamation projects will never be sufficient to address more than 10 to 20 percent of the Nation's abandoned coal mine sites. Because many of these abandoned coal lands till contain valuable coal deposits, industry has made an effort to remine them, and as such, reclaim the sites.

However, in many instances, coal remining is not economically and technically feasible because industry becomes liable for treating the preexisting water discharges under stringent national effluent guidelines. This coal remining provision will enable industry to enter abandoned coal mine sites and engage in mining under modified water quality standards established on a case-by-case basis. The end result of this effort will be the reclamation of the site and as such, an improvement in water quality over that which existed at the site prior to remining.

As the author of this coal remining provision, I would note that a rather detailed legislative history has been established to assist in its implementation. In this regard, interested parties should refer to the Congressional Record of July 23, 1985, at which time I provided a full explanation of the provision during the debate on H.R. 8, the House-passed version of S. 1128, as well as to the colloquy between the chairman of the committee with jurisdiction over the Surface Mining Control and Reclamation Act of 1977, Morris Udall, and myself conducted during the last Congress, which can be found in the Record of June 26, 1984, when a similar version of this provision passed the House as part of H.R. 3282.

This coal remining provision is the product of lengthy negotiations between members of the environmental community and the coal industry and serves to show that agreements on matters pertaining to surface coal mining can be reached when all parties approach the issue in good faith. In this regard, I would like to extend my appreciation to Hope Babcock of the Audubon Society and Tom Galloway of Galloway & Greenberg for this work on this provison on behalf of the environmentalists, and to Al Whitehouse of Buffalo Coal Co. and Tom Altmeyer of the Mining and Reclamation Council of America who provided the coal industry's input into the formulation of this language.

The support I received for this provision from my chairman on the subcommittee on Water Resources, BOB ROE, and his tenacity in gaining its acceptance by the other body is also deeply appreciated as well as that of Mo UDALL, the distinguished chairman of the Committee on Interior and Insular Affairs, who provided the insights into the relationship between this provision and the Federal surface mining law that were crucial to our negotiations. The gentleman from Pennsylvania and a member of the Committee on Public Works and Transportation, BILL CLINGER, was also very supportive of this effort.

Mr. STANGELAND. Mr. Speaker, I yield such time as she may consume to the gentlewoman from New Jersey [Mrs. ROUKEMA]

(Mrs. ROUKEMA asked and was given permission to revise and extend her remarks.)

Mrs. ROUKEMA. Mr. Speaker—I wish to commend my colleagues on the conference committee, and especially Chairman BOB ROE of the House Public Works Subcommittee, for their work on this important legislation and specifically on behalf of the people of Wanaque, NJ.

Especially important for my constituents is a provision of this bill which provides $2.1 million in funding for the Wanaque Valley Regional Sewerage Authority in Wanaque, NJ. This funding will help to rectify an inequitable situation arising from the construction of a water treatment facility in northern New Jersey. Residents of Wanaque have been facing astronomical increases in their sewerage fees because two of the three towns comprising the Wanaque Valley Sewerage Authority have withdrawn from agreements that would have spread the cost of this facility more equitably. This, coupled with decreases in Federal cost-sharing levels since the original planning of the project, would have increased Wanaque residents' sewerage fees by $160 to $200 per household annually—to between $500 and $1,000 per household. Without this legislation the people of Wanaque would suffer financial penalties through no fault of their own.

The provision included in today's bill, the Water Quality Renewal Act, boosts the Federal funding level for construction of the new Wanaque plant to 75 percent. In addition, new Federal funds will be made available for expansion of the facility, at a 75-percent Federal funding level. These combined actions will add $2.1 million to the total Federal funds available for the Wanaque project.

I wish to thank Chairman ROE for his efforts on behalf of my constituents. Since I first approached him on this matter many months ago, he has taken an active interest in rectifying this inequitable situation.

I urge, once again, that my colleagues support this important legislation.

Mr. STANGELAND. Mr. Speaker, I yield such time as he may consume to the gentleman from Pennsylvania [Mr. CLINGER], a member of the Subcommittee on Water Resources.

(Mr. CLINGER asked and was given permission to revise and extend his remarks.)

Mr. CLINGER. Mr. Speaker, I rise in strong support of the conference report accompanying S. 1128 and I urge all Members to vote for this legislation.

Chairman JIM HOWARD and subcommittee chairman, BOB ROE, and ranking Republicans GENE SNYDER and ARLAN STANGELAND have done an outstanding job balancing the complex and sensitive issues incorporated in this bill, and representing the interests of this body with their counterparts from the other Chamber. I commend them and their staffs for the long hours of negotiation that makes it possible for us to consider the conference agreement we have before us today.

S. 1128 amends the Federal Water Pollution Control Act of 1972 and authorizes funding for a number of programs devoted to cleaning our rivers, lakes, and streams.

As Members may recall, the goal of the act is to clean our waters so they are swimmable and fishable. This bill helps take us toward that objective.

Mr. Speaker, I would just comment also on the matter referred to by the gentleman from West Virginia [Mr. RAHALL]. I think this is a very important provision in this conference report. There are literally hundreds of thousands of abandoned mines around this country, 40 to 45 percent of which have coal reserves which can be extracted, but nobody is willing to extract them because of the liabilities they will assume under present law if they go in and attempt to remove that coal. They would become responsible for cleaning up the entire pollution problem. The amendment that the gentleman from West Virginia has worked so diligently on and which I was pleased to work with him on will remove that impediment. It will allow a producer to go into an abandoned mine site to re-mine that coal and not assume the crushing liability for cleaning up the whole site. It will not result in any degradation of water quality, however, and it will have to provide for the potential for improving the water quality of that site. I think it is a very, very helpful development for the coal industry and it is going to result not only in our ability to re-mine areas that presently are not being touched, but also will result I think in substantial improvement of water quality in a vast number of these abandoned sites.

It wasn't too long ago we were reading press accounts about filthy, toxic conditions prevalent in many of our major rivers and lakes. Think back for a moment when the Hudson, Monongahela, and Ohio Rivers were void of native wildlife. Lake Erie was considered practically dead. And then look at them today. All are enjoying a renaissance; fish are returning in larger numbers; certain species are beginning to reestablish spawning grounds in areas once considered chemical cesspools; and many related forms of native wildlife are beginning to flourish again.

We were able to achieve these gains through aggressive Federal funding for constructing wastewater treatment plants, and through the aggressive regulation of toxic discharges. The bill before us today seeks to improve upon these achievements by imposing more stringent standards on the amounts and types of pollutants discharged into our waters.

At the same time, this legislation recognizes the budgetary realities now facing the Federal Government. It does not attempt to increase funding for the Wastewater Treatment Construction Grants Program; rather, it phases out the grant program and instead establishes a modest revolving loan fund to be administered by the States.

Some administration officials have already gone on record in sharp disagreement with this legislation, arguing that the construction grants funding is too high. In the bill, we've authorized $18 billion through 1990. I'd like to remind Members that a needs-assessment survey undertaken in 1984 by the EPA estimated a total investment of $101.7 billion was required of Federal, State and local governments, and private investment, through the year 2000 to meet current and projected demands. In light of this assessment, I don't believe you can characterize S. 1128 as a "budget-buster."

You must pay a price to clean up discharges, and I believe the bill before us meets this test responsibly.

Mr. Speaker, this bill tightens a number of regulatory guidelines; it authorizes a Federal grant program to clean up lakes; it establishes a storm-water discharge program designed to address a major source of pollution; and it stiffens fines and penalties for polluters.

We need this legislation. It is necessary as well as responsible and I urge all Members to support it.

Mr. ROE. Mr. Speaker, I yield 4 minutes to the distinguished gentleman from Georgia [Mr. Rowland].

(Mr. ROWLAND of Georgia asked and was given permission to revise and extend his remarks.)

Mr. ROWLAND of Georgia. Mr. Speaker, I rise in strong support of the conference agreement on clean water and also to pay tribute to the leadership of the gentleman from New Jersey [Mr. Roe], chairman of the Water Resources Subcommittee.

I have served on the Subcommittee on Water Resources since joining the Congress in 1983 and witnessed the delicate balance the chairman has struck with its members over the years. I was keenly aware of his leadership ability, and especially the gentleman is truly to be commended for his fight to retain much of the House language during negotiations, particularly the House allocation formula for distribution of construction grants funds.

I also want to commend the chairman of the full committee, the gentleman from New Jersey [Mr. Roe], and the ranking minority member of the full committee, the gentleman from Kentucky [Mr. Snyder], and especially the ranking minority member of the subcommittee, the gentleman from Minnesota [Mr. Stangeland], for the hard work that they did, and also to commend the staff on both sides.

The conference agreement, which includes a provision exempting certain storm water runoff from the NPDES permitting process takes a giant step toward reducing the immense regulatory burden being proposed by the EPA. As a result, the cost to local governments for complying with the act will be restrained. Under current law, municipalities would be required to obtain permits for each of the millions of storm water discharge points across the country at a cost which would be almost impossible to meet per permit application. It does not take a whiz at math to realize that our cities and towns were facing massive capital outlays; the cost could have easily exceeded $8.5 billion in expenditures for compliance with the proposed EPA regulations from storm water discharge.

Other storm water discharges are exempted from permits unless they fall into one of five categories. One of the discharge categories is "a discharge associated with an industrial activity." A discharge is not considered to be associated with industrial activity unless it is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. Such discharges include those from parking lots and administrative areas and employee buildings.

At the same time, the agreement will strengthen the act through tighter controls and enforcement mechanisms, thus insuring that all of our national waters will ultimately be free of pollution and remain that way for future generations.

Mr. Speaker, I hope our colleagues will support the conference agreement which is a well-thought-out and hard-fought agreement that does justice to the environment and reaffirm the Congress' ability to accomplish the objectives for which it exists; to serve those who have the confidence to trust us with their welfare.

Mr. Speaker, I want to engage the chairman of the subcommittee, the gentleman from New Jersey [Mr. Roe] in a short colloquy at this point concerning the provisions for a study in the storm water runoff section.

May I ask the chairman, as I understand it, this study would only require the EPA to carry it out in areas that are not permitted. I would like for it to be understood that this will not preclude the EPA and the States and it does not preclude them in the law from carrying out the studies in other areas if they so desire.

Mr. Speaker, I yield to the gentleman from New Jersey.

☐ 1815

Mr. ROE. As the gentleman knows from his extraordinary work on this legislation, which I applaud and appreciate, the intent of the conferees and the intent of the committee is that they would have wider latitude to do their studying, as the gentleman has suggested.

Mr. ROWLAND of Georgia. I certainly appreciate that, and again I appreciate the hard work that the gentleman has done on this legislation.

Mr. STANGELAND. Mr. Speaker, I yield 4 minutes to the gentleman from California [Mr. Packard].

(Mr. PACKARD asked and was given permission to revise and extend his remarks.)

Mr. PACKARD. Mr. Speaker, I rise in support of S. 1128, the Clean Water Reauthorization Act. I would like to commend the gentleman from New Jersey [Mr. Roe], and the gentleman from Minnesota [Mr. Stangeland], the ranking minority member, as well as the gentleman from New Jersey [Mr. Howard], and the gentleman from Kentucky [Mr. Snyder] for their leadership on this legislation. They and the committee staff have worked long and hard to bring this legislation to a successful conclusion. All should be commended for their diligence and perseverance.

This bill is of great importance to the citizens of San Diego County, CA. In particular, it addresses a longstanding problem involving Tijuana sewage. For some time, the city and county of San Diego have been plagued with raw sewage emanating from Tijuana, Mexico. This bill authorizes defensive treatment works to address this problem.

In addition, this legislation authorizes additional treatment works to take care of this problem if they are needed, particularly if the Mexican's construct their stage II Alamar Plant. If the stage II Alamar Plant is built by the Mexican's, this bill provides authority to build additional treatment works on the United States side of the border. A number of alternatives have been suggested such as an inland plant land outfall or a deep ocean outfall. One or both if these alternatives may be constructed if the Administrator determines they are necessary to take care of this difficult problem.

Furthermore, it is my understanding that a Federal agency or commission, or such other Federal entity designated by the President will be responsible for the operation and maintenance of any treatment works constructed under the provisions of this bill. This is not just a San Diego issue, or just a California Issue, but rather it is a Federal issue as well.

I urge my colleagues to vote for this conference report and I urge the President to sign this legislation into law as rapidly as possible so that we can begin to address the many problems this bill is designed to correct.

Mr. Speaker, there is a point involving the provisions of this bill regarding Tijuana sewage which I would appreciate a clarification on. Specifically, it is my understanding that any treatment works built to take care of the Tijuana sewage problem will be operated and maintained by a Federal agency, commission, or entity as designed by the President. Is this the understanding of the conferees?

Mr. ROE. Mr. Speaker, will the gentleman yield?

Mr. PACKARD. I yield to the gentleman from New Jersey.

Mr. ROE. The gentleman from California is correct. His understanding regarding operation and maintenance of these treatment works by a Federal entity is the same understanding shared by the conferees.

Mr. PACKARD. I thank the gentleman for his clarification.

Mr. ROE. Mr. Speaker, I yield 1 minute to the gentleman from Maryland [Mr. Dyson].

(Mr. DYSON asked and was given permission to revise and extend his remarks.)

Mr. DYSON. Mr. Speaker, I think that everyone in this House knows that the Chesapeake Bay is in trouble. It is one of the largest estuaries in the world, and it has been suffering from pollution ever since the first Marylanders came about 350 years ago.

We have in conference report, which I would urge all the Members of the House to support, a section that the subcommittee has agreed to that will help us in our efforts in Maryland, Virginia, and Pennsylvania to clean up the Chesapeake Bay.

Mr. Speaker, the revitalization of this historic bay will benefit not only those States I just mentioned, but the entire eastern seaboard. With a clean bay we may restock the dwindling striped bass population which is so important to the economy of these States. The upper bay is the major spawning ground for this important, and endangered fish. A clean bay will almost assuredly add to the survival of the striped bass for future generations of Americans.

Much time, money, and energy has already been spent on restoring the bay. This noble effort has been conducted by the Federal and State governments, environmental and private citizen groups, and by those individuals who use the bay for recreation and to earn their livelihood. It is our duty to see that these efforts continue, for they are already providing that we can reverse the generations of abuse and neglect that has damaged the bay's water. By passing this important legislation, we will accomplish this goal.

So today I would like to thank the gentleman from New Jersey [Mr. Howard], the gentleman from New Jersey [Mr. Roe], the gentleman from Kentucky [Mr. Snyder], and the gentleman from Minnesota [Mr. Stangeland] for their efforts in bringing this important bill to its conclusion.

I urge my colleagues to support the reauthorization of the Clean Water Act. I think that someday we can count on seeing a cleaner Chesapeake Bay, and all Maryland is indebted to them for their efforts.

Mr. STANGELAND. Mr. Speaker, I yield 2 minutes to the gentlewoman from Maryland [Mrs. Bentley], a member of the full Committee on Public Works and Transportation.

(Mrs. BENTLEY asked and was given permission to revise and extend her remarks.)

Mrs. BENTLEY. Mr. Speaker, as a result of the hard work of the House/Senate conferees on the Clean Water Act Amendments of 1986, we have before us today the conference report for consideration. I commend all those responsible for bringing us this agreement on the clean water legislation.

Our House conferees are to be commended. Mr. Howard, Mr. Roe, Mr. Anderson, Mr. Mineta, Mr. Oberstar, Mr. Edgar, Mr. Towns, Mr. Snyder, Mr. Hammerschmidt, Mr. Stangeland, Mr. Clinger, and Mr. Shuster represented the will of the House as House conferees on the clean water bill.

As a member of the Committee on Public Works and Transportation, I had the privilege to participate in preparation of the clean water legislation. Many of my colleagues have joined me in working to ensure passage and enactment of the Clean Water Act Amendments of 1986.

This legislation will reauthorize Federal funding for construction of local sewage treatment systems. These funds are necessary if we are to continue the important work of cleaning up the environment.

Included in the conference report to the clean water bill are measures requiring States to develop plans for combating nonpoint source pollution, such as polluted runoff from city streets and farmland. These measures are of major importance to the Midatlantic States of the Chesapeake Bay region. Maryland, Virginia, the District of Columbia, and Pennsylvania have been working for the last decade to implement effective legislation needed to restore the Chesapeake Bay.

In my home State of Maryland, some 50 percent of the pollution entering the upper Chesapeake Bay is a result of nonpoint source pollution. Enforcement of this clear water bill will play a vital role in significantly reducing half of the pollution entering our Nation's largest natural estuary.

The restoration of the water quality of our Nation's water supplies is of importance to all. This conference report takes into account efforts made by State and local governments. Cost sharing provisions between Federal and State governments are included to help implement water pollution programs.

Federal construction grant assistance is the cornerstone of each State achieving an effective environmental initiative needed to reduce water pollution. In Annapolis, MD, the Chesapeake Bay Program Office has contributed to much of the success of controlling water pollution. This program, under the direction of the EPA, has worked to coordinate Federal and State efforts in restoration of the Chesapeake Bay.

Regional planning councils and local and State governments will play a more active role in development and implementation of water quality maintenance. Federal funds, distributed to States, will be passed on to local governments and those directly involved in water quality planning. Because of this provision, the Baltimore Regional Planning Council anticipates greater success in their work to reduce water pollution.

Within my home district, the Second Congressional District of Maryland, industries have been working to end pollutants entering our water supply. A new program will be established under this bill for cleaning up toxic "hot spots"—waters that will not meet water quality goals even after industrial dischargers have installed the best available cleanup technologies. Private industry working with government will succeed in eliminating pollutants which impose a threat to the environment.

Studies have been conducted by the Chesapeake Bay Office to determine the impact natural and man-induced environmental changes have on the living resources of the bay. Such studies are essential to cleaning up pollutants which are a result of nutrients, chlorine, acid rain, toxic waste, and heavy metals present in our water supply. A continuation of EPA programs such as this one will help us to achieve a cleaner environment. We need a dependable water supply to meet our water needs.

Mr. Speaker, I urge my colleagues to join me in working to meet our water needs by voting for passage of this conference report agreement accompanying the Clean Water Act Amendments of 1986.

Mr. ROE. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. NOWAK].

Mr. NOWAK. Mr. Speaker, I would like to engage in a colloquy with the gentleman from New Jersey to clarify the funding provisions of the Great Lakes amendment, that have been incorporated into the conference report.

First, I would like to thank the gentleman for his support of the amendment, which for the first time establishes a coordinated cleanup program for Great Lakes. This is a small part of the bill, but a big step forward for the Great Lakes, and I think the gentleman can be proud of his role in helping to make it happen.

The amendment provides $11 million per year from fiscal 1987 through fiscal 1991 to be subdivided as follows: $4.4 million for demonstration cleanups of toxic-contaminated sediments; $3.3 million for a NOAA research program; and $770,000 for nutrient monitoring. I just want to clarify that these funds are to be provided in addition to the existing appropriation for the Great Lakes National Program Office.

Mr. ROE. If the gentleman will yield, the gentleman's understanding is correct. The purpose of the amendment is to build on the agency's existing resources, not to displace them.

Mr. NOWAK. If we viewed the amendment any other way, the result would be absurd. The Great Lakes National Program Office currently has an operating budget of $5 million per year. That money is used to support vital projects such as studies of atmospheric deposition in the lakes, and toxic contamination in nearshore areas. These ongoing activities are required by the United States-Canada Water Quality Agreement. If this amendment were to be seen as displacing the existing GLNPO appropriation we would actually be reducing funding for these activities to $2.5 million per year. I just want to make clear that the committee does not intend such an absurd result.

Mr. ROE. That is right. The point of this amendment is to reverse a decade of neglect of the lakes, not to add chaos to EPA's existing programs. A recent National Academy of Sciences report found that the population of the Great Lakes is exposed to appreciable more toxic substances than those in other parts of the United States. This amendment will provide the EPA with the resources to help reverse that trend.

Mr. STANGELAND. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey [Mr. GALLO], a valued member of the Water Resources Subcommittee.

(Mr. GALLO asked and was given permission to revise and extend his remarks.)

Mr. GALLO. Mr. Speaker, I rise to strongly support this bill, which reauthorizes the Clean Water Act. A great many Members of this body have spent a great deal of time to develop this bill. It meets the very real needs of the people of New Jersey and across the country.

In July 1985, when I rose in support of this bill when it first came before us, I said that it provides the tools to help us with a number of serious environmental problems. In the last 15 months, those problems have not gone away. In the State of New Jersey, there are currently more than 200 communities on building bans as they work hard to meet our Federal standards with regard to sewage treatment.

These communities need our assistance in these efforts to reverse the effects of our past actions.

We are answering this call for help today, with $18 billion nationally to continue our commitment to clean water.

The State of New Jersey will receive $99 million in our continuing efforts in this area.

In addition to reauthorization of our current grant program through 1990, we are creating an innovative program to create revolving funds in each State for the purpose of meeting the future needs of our communities in the year 1991 and beyond.

This program is very close in concept to the Infrastructure Bank legislation which I sponsored as the Republican leader in the State assembly 4 years ago.

I believe in this program, because it will provide a greater degree of support to local governments than can be provided under the current grant program.

I am very proud of the part I was able to play in the Public Works and Transportation Committee during the development stage of this bill. I urge my colleagues to support this important legislation.

□ 1825

Mr. ROE. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from West Virginia [Mr. Wise.]

Mr. WISE. Mr. Speaker, I thank the gentleman from New Jersey [Mr. Roe], and I greatly appreciate the opportunity to speak on all that he has done in this bill.

This bill is very important for a rural State such as West Virginia because the construction grants program that is so essential as we build these sewer systems that are necessary for economic development, for providing a decent way of life, for making sure that our rivers are truly fishable and swimmable. I am pleased to say that in this bill the share that West Virginia will receive under the construction grants program will remain almost the same as it has been receiving, $38 million a year. This is a great deal of help and it will continue through 1990. Of course then this bill will create a revolving loan fund that the State will be eligible to participate in.

The good news about the revolving loan fund is that as moneys are paid back into the revolving loan fund, they are then made available again for other projects in the State of West Virginia. So this is an important element that will permit us to carry on the necessary sewer construction that must place now, estimated within my State to be approximately 2.5 billion dollars' worth of necessary sewage construction.

There were those who would urge a much lesser share for construction grants. Happily they were not successful, and indeed the program will continue essentially as we have known it for the next 6 years.

I appreciate the chairman and all that he has done to bring this bill to the floor, and I heartily endorse it.

Mr. STANGELAND. Mr. Speaker, I yield 2 minutes to the gentlewoman from California, [Ms. Fiedler].

Ms. FIEDLER. Mr. Speaker, I would like to ask the gentleman from Minnesota a question regarding the amended section 203(a) of this conference report on S. 1128, the Clean Water Act Amendments of 1985. In my district, the Los Virgenes Municipal Water District received a construction grant after its plans, specifications, and estimates were approved on several occasions by EPA and the State of California. Several years later and after final completion of the construction project, a review of the project has resulted in a recommendation to disallow some of the project's cost because the total amount of expected sludge generation has not been realized. By EPA's own program staff admission there is no evidence of waste, fraud, or abuse. Nonetheless, the Los Virgenes District has been forced to enter into the expensive process of refuting this disallowal.

Has the committee run into problems similar to this in any other areas of the country with respect to EPA Construction Grants Program decisions?

Mr. STANGELAND. If the gentlewoman will yield, yes we have and that is why the committee included in our House-passed version of this legislation and why we have also included in the conference report before us today the language of section 203(a). This section provides that, before taking final action on certain plans and specifications, the Administrator shall enter into a written agreement establishing which items of a proposed wastewater treatment project are eligible for Federal grant assistance. The section also provides that the Administrator may not later modify his eligibility determinations unless they are found to have been made in violation of Federal law.

Ms. FIEDLER. Would the distinguished gentleman from Minnesota [Mr. Stangeland] agree to work with me, or whoever represents my district, and with the Chairman of the Water Resources Subcommittee next year to conduct oversight on the extent to which problems such as those experienced in my district concerning the Los Virgenes Municipal Water District may need to be addressed further by congressional action?

Mr. STANGELAND. Yes, I would certainly be pleased to lend my support to the request of my esteemed California colleague.

Ms. FIEDLER. I thank the gentleman for this clarification and also his willing assistance.

Mr. ROE. Mr. Speaker, I yield one-half minute to the distinguished gentleman from Minnesota [Mr. Oberstar].

(Mr. OBERSTAR asked and was given permission to revise and extend his remarks.)

Mr. OBERSTAR. Mr. Speaker, I rise in strong support of the conference report to accompany the Water Quality Renewal Act of 1986, and commend the gentleman from New Jersey [Mr.

Howard], chairman of the Public Works and Transportation Committee, for his very early leadership on this bill way back in 1983 when he introduced the first version of the Water Quality Renewal Act. But a very special tribute is due to the gentleman from New Jersey [Mr. Roe], the chairman of the Water Resources Subcommittee, who has labored virtually day and night since 1983 over every comma, semicolon, and period, every clause, every phrase, every sentence of this bill to bring it and other needed environmental legislation to final congressional action, and hopefully through to enactment.

I am particularly appreciative of the gentleman's sensitivity to three provisions of this bill that are of particular concern to me: The Nonpoint Sources Control Act, the provisions on antibacksliding, and the amendment in section 205(j), which are my amendments to the 1981 Clean Water Act.

The gentleman from New Jersey has been most cooperative and supportive and understanding and a splendid legislator. I commend also the ranking member of the full committee, the gentleman from Kentucky [Mr. Snyder], who has watched over this legislation and given of his wisdom and his support every step of the way, as well as the gentleman from Minnesota [Mr. Stangeland], the ranking minority member of the subcommittee, who has devoted countless hours and a great deal of thought and contributed significantly to the shaping of the final version that comes before us today.

We have a truly outstanding piece of legislation that will keep the Nation on its commitment toward fishable, swimmable waters, and a commitment to clean water in America. I urge passage of the legislation.

Nonpoint sources: The conference agreement on management of nonpoint sources of water pollution will close the one remaining large gap in the Clean Water Act, runoff from farms and forests, urban streets and lawns, construction sites and mines. In many areas of the country, on many water bodies, these pollutants now cause more water quality degradation than do point sources. It is thus crucial that this section, which creates a new section 319 in the Clean Water Act, be enacted now.

The agreement emphasizes the need to improve water quality as well as to reduce nonpoint sources of pollution. State management programs must not only control nonpoint source pollution but also improve water quality. The agreement further provides that the administration shall disapprove a State program or portion of a program, if it is not adequate to reduce nonpoint sources and improve water quality.

The House version of the nonpoint source program incorporated very early a firm insistance on water quality improvement, reflecting the main thrust of the Federal Water Pollution Control Act. Water quality improvement was not intended to be a precise measurement but a broad overall requirement that the Administrator, in his judgment, determine that the State is addressing the major sources of pollution on each particular stream segment. For instance, a program which reduced sediment from a construction site, on a segment where the main pollutants were from agriculture or acid mine drainage, would reduce pollution but not add to the overall goal of upgrading the stream. The House bill also sought to avoid instituting best management practices [BMP's] on a scatter approach, one here, one there. Given the scarcity of resources, it required States to select priority watersheds on which to focus their resources, with the anticipated result that cleaner streams would result.

The conference agreement adopted a broader approach, requiring State management programs to address all waters which, without additional action to control nonpoint sources, cannot reasonably be expected to attain or maintain water quality standards or the goals and requirements of the act. However, it retains the requirement for water quality improvement and, in the conference report, states that it would be appropriate for States to focus on specific categories and subcategories or watersheds where nonpoint pollution is a significant problem and to set priorities among categories, subcategories, and watersheds. It also provides that States are, to the maximum extent practicable, to develop and implement their programs on a watershed-by-watershed basis. At the same time, it is very clear that management programs may not exclude watersheds not meeting water quality standards or categories or subcategories contributing significant nonpoint pollution.

I believe the conference agreement is a happy combination of both House and Senate approaches, assuring that no nonpoint source-polluted waters or significant sources will be neglected, while at the same time allowing States to focus on priority watersheds and sources.

The agreement also mandates that BMP's be undertaken as part of the State management programs. The other parts of the program, such as technical assistance and education, are important, but actual BMP's are required under the nonpoint section.

The conference agreement contains several sections relating to local organizations such as conservation districts and other regional substate entities. Programs are to be developed and implemented, to the maximum extent practicable, with the involvement of local, substate regional and interstate entities with expertise and experience in control of nonpoint sources. Further, to assure the maximum implementation possible, the agreement provides that, if a State fails to submit a management program, or if it is not approved, a local public agency or organization with expertise in and authority to control nonpoint sources may, with the approval of the State, develop and implement a program for its area.

The agreement establishes a mechanism for reconciling pollution of one State's waters by another State. At the request of a downstream State with an approved plan, or at the initiation of EPA, an interstate management conference of all States contributing significant nonpoint pollution to the water body shall be convened to develop an agreement between the States. To the extent that States reach agreement through the conference, their management programs will be revised to reflect agreements reached at an interstate management conference. It is intended that the agreements will be incorporated in revised State programs and will be carried out. Management programs are to be consistent with Federal and State law.

Antibacksliding: During Water Resources Subcommittee hearings on proposed legislation, several examples were cited of companies seeking, and in some cases States trying to provide, relaxation of permit limits which were based on water quality standards, or on what is called best professional judgment [BPJ]. I was particularly concerned at two instances, one where a company argued that its new permit should allow increased discharges because the water quality had improved since its last permit was issued. In the second instance, a State proposed to reapportion wasteload allocations among four plants, after a fifth plant on the stream segment had closed, thereby freeing up some stream assimilative capacity. In both cases the argument was that a stream could be polluted back down to the water quality standard. The effect of such procedures would be to freeze water quality at the standard, the lowest quality allowed by law, and would run counter to the thrust of the Clean Water Act, which is the continued improvement of water quality.

There are some valid reasons for relaxing a permit's requirements, which the antibacksliding provision carefully defines. However, the provision is intended to prohibit renewal, reissuance, or modification of permits to include less stringent effluent limitations except under certain carefully controlled circumstances.

I urge the Administrator, the regions and the States to be particularly vigilant against backsliding, and announce my intent to keep very close scrutiny over its implementation.

Regional wastewater management agencies: Finally, I am pleased at the conference agreement amendments to section 205(j), which I added to the 1981 Clean Water Act amendments. That provision clearly required the States to share the funds set aside under this subsection, and the planning responsibilities, with local agencies. In the intervening years, however, we have had many complaints from agencies across the country that the States were not passing these funds through. For example, in 1982, only $4.9 million of the $24 million available under the subsection was passed through to areawide and local water quality management agencies. Accordingly, I introduced, and the House adopted, my provision mandating that 50 percent of the funds be passed through to local agencies. As amended in the Public Works and Transportation Committee and in conference, the provision requires that at least 40 percent of a State's funding go to regional public comprehensive planning organizations and appropriate interstate organizations for the development or implementation of water quality management plans, unless the Governor, in consultation with such organizations and with the approval of EPA, determines that this allocation would not result in significant participation by these organizations. The test, or the burden of proof against the passthrough, is necessarily high and difficult to make, because EPA and the States have, in the past, resisted the intent of Congress. I hope that this will be the last time that Congress will have to clarify an intent which was already quite clear in both the 1981 amendments and the legislative history.

Mr. Speaker, again I commend all my colleagues who participated in bringing this conference agreement to the House floor. As one who participated at the staff level in writing the landmark Federal Water Pollution Control Act Amendments of 1972, I can attest that this bill keeps faith with that act, and will enhance its objective of restoring and maintaining the chemical, physical, and biological integrity of the Nation's waters.

I urge all my colleagues to support it, and the President to sign it into law.

Mr. STANGELAND. Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan [Mr. HENRY].

(Mr. HENRY asked and was given permission to revise and extend his remarks.)

Mr. HENRY. Mr. Speaker I rise in strong support of this legislation.

Mr. Speaker, I want to use the occasion of the conference report on the Clean Water Act to emphasize a point relative to the enforcement of the act by the Environmental Protection Agency.

We are all aware of the fact that a major issue with this bill is the level of funding authorized for the construction grants program. Even at the amount authorized in the conference report, which the administration threatens to veto because it is too high, funds for this program will be more limited than ever. There is no question that this will put many local communities in a very difficult position, as they attempt to meet Federal deadlines for compliance without Federal assistance, or with a much lower level of Federal assistance.

In many cases, these communities are at the final stage of compliance with Federal regulation, the construction phase. The step 1 and step 2 studies and plans, however, were done in a different "era"—an era of plenteous Federal funding and "imprecise" Federal deadlines. As a result, the studies and the construction plans may not have been done with the same eye toward construction costs and cost effectiveness as would be the case when 75 percent Federal funding is not available.

Much has changed. The 1981 changed in the law and the resulting EPA regulations have brought some flexibility to municipal requirements. There are new technologies available which can achieve the level of secondary treatment required which were not available 5–8 years ago. And overriding everything is the reduction in Federal funds, which has brought a new, and proper, realization of the costs of these projects and consideration of the cost effectiveness of various approaches to meeting the discharge requirements.

These changes make it incumbent on EPA to adopt an equitable and reasonable approach to achieving compliance by local communities, particularly smaller communities which not only lack the resources to construct these plants on their own, but, as EPA has noted, in most cases represent the least threat to the quality of our rivers and lakes.

Unfortunately, it is not being done that way. I have one of those communities in my own district. The step 1 and step 2 stages were completed in the days when Federal funds were plentiful. With the blessing of the enforcement agencies, the city delayed construction until it could move up the State priority list and be eligible for 75 percent Federal funding. Then suddenly last year, the enforcement agency demanded that the city sign a consent agreement setting forth a construction schedule, without any guarantee of Federal funds.

When they refused because the cost of the plant, under the plans which had been completed years earlier, would more than double the local tax burden, if the city was required to finance the entire plant itself, the EPA "lowered the boom"—filing suit against the city in Federal district court. In subsequent discussions, the EPA has insisted that the only issue is over penalties for noncompliance, which it is insisting upon, despite the fact that penalties would obviously only make it more difficult for the city to achieve compliance.

I say to the EPA and to my colleagues here—this is not the way to get things done. It will do no good, and it will not get the water any cleaner to do business in this way. EPA should focus on the goal, which is to protect the quality of our water, and to lend its considerable expertise to achieving this goal by working with, not against, communities in this position. It has taken the intervention of the court to permit the city, at its own expense, to redo the studies and possibly come up with alternative plans.

These are things EPA should be assisting in, because we are no longer n that era when the Federal Government will pick up the tab for 75 percent of the costs. So I urge the EPA to spend its efforts at helping these communities find solutions to these problems. It is quite obvious that if EPA does not take this approach, but insists on arbitrary deadlines and seeks penalties rather than affordable solutions, then we in this body will be under increasing pressure to once again delay the statutory deadlines for compliance.

Mr. STANGELAND. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. Green].

(Mr. GREEN asked and was given permission to revise and extend his remarks.)

Mr. GREEN. Mr. Speaker, I thank the gentleman for yielding me this time and want to congratulate the conferees on the successful conclusion of the conference on this most important piece of legislation. I think you have done extremely well, and I urge the Members to support you and pass the bill

As the ranking minority Member on the Appropriations Subcommittee for EPA, I know many of the problems you faced in crafting this legislation, and I think you have done an excellent job. I know that the administration would have liked to have a lot sooner the start of a revolving fund with the loan mechanism replacing the grant mechanism. But, frankly, I think you did a wise thing in taking your time in putting that into effect, because I think there are some real problems as to whether some of the communities involved, particularly some of the smaller communities, are going to be able to use that mechanism effectively. I think that we have to recognize that during the course of time that this legislation was under consideration that tax law changed very considerably, and the possibility of using private operators who could benefit from the investment tax credit and the accelerated costs recovery system is now gone. I think we are going to have to take a good hard look during the time that you have given us in the bill that you have brought before us before we begin this revolving fund and the replacement of the grants with loans kicked in. I think we are going to have to use that time to see if everyone who needs to help that this bill offers will be able to use that substitute mechanism.

So I congratulate the conferees on their product, and I urge all the Members of the House to support the conference report.

☐ 1835

Mr. ROE. Mr. Speaker, I yield 2 minutes to the gentleman from Alabama [Mr. Bevill]

Mr. BEVILL. Mr. Speaker, I thank the chairman for yielding to me so that we may enter into a colloquy here regarding H.R. 6.

I want to commend Chairman Howard and ranking minority member, Mr. Snyder, and Chairman Roe here as well as ranking minority member, Mr. Stangeland regarding H.R. 6, the public works authorization bill.

As everyone knows, we have been waiting now for 16 years for an authorization bill, and I want to commend the committee and the subcommittee for what they have done, because they passed legislation through this body for at least 4 times in the last 8 years; but for the last 16 years we have not had a bill, and we are right on the verge, I know, of having one now, and I commend all the Members for the tremendous work they have done.

Mr. Speaker, I do not know of any

committee or subcommittee in this Capitol that has worked longer and harder hours in putting this piece of legislation together, and I do not know one that is more needed in this country than that piece of legislation.

So this is why I am asking you if you would give us a status report of where we are. I know the other body has passed it; we passed it first and they passed it this time for the first time—the other body has been unable to get the bill through. This is a matter most urgent to our Nation, and I would appreciate it if the gentleman could give us a report.

Mr. Speaker, I yield to the gentleman from New Jersey (Mr. Roe).

Mr. ROE. Mr. Speaker, I appreciate the kind words the gentleman from Alabama [Mr. Bevill] expressed on behalf of our committee, Mr. Howard and myself, Mr. Stangeland, Mr. Snyder, and the other members of our committee. We have worked assiduously hard, as you know, for 3 years on this legislation, and we have concluded our work.

This body, our House, and the other body have passed the bill overwhelmingly. We have completed our work in conference with the exception of just one item, which has to do with the vessel tax issue, which is the 0.04-percent ad valorem tax in the added diesel fuel tax on the inland waterway transportation operations.

It would not take more than 15 minutes to pass that, because that program was agreed to by everybody, both in the House and the Senate. We are waiting for the Committee on Ways and Means to make that move.

As the gentleman knows, we have been waiting for a week now, and our problem is that if we cannot get that done we are going to lose out simply because we cannot file the report until Ways and Means acts.

But we are confident; I have talked to the chairman of that committee. Chairman Howard has talked to the chairman of that committee, and we are confident that it will be moving soon.

Mr. BEVILL. I thank the gentleman.

Mr. STANGELAND. Mr. Speaker, I yield 2 minutes to the gentlewoman from Connecticut [Mrs. Johnson].

(Mrs. JOHNSON asked and was given permission to revise and extend her remarks.)

Mrs. JOHNSON. Mr. Speaker, I rise in strong support of the Clean Water Act and want to commend the gentleman from New Jersey [Mr. Roe], the gentleman from Minnesota [Mr. Stangeland], the chairman of the committee, the gentleman from New Jersey [Mr. Howard], and the gentleman who serves admirably as our ranking member, Mr. Snyder of Kentucky, on their leadership over so many years in bringing this bill to final passage.

Under Mr. Roe's and Mr. Stangeland's leadership, we did not just recycle the last Congress' proposal this year, but went through every section and reviewed every "t" and every "i," as Mr. Roe likes to say, and reevaluated the merits of each section. That painstaking approach improved the bill considerably and so we have before us a fine piece of legislation that will assure continued progress toward cleaning up the waterways of our Nation.

I rise in very strong support of the Construction Grant Program. It is extraordinarily important because it will move along projects that will have an impact on the quality of water for decades ahead and make some of the communities I represent to expand industrial parks and attract new jobs. The provisions that streamline the program to deal with those situations in which storm-water systems are not separate from sewers will have enormous impact on the older urban areas of the Nation, where storm-water overflow is in many instances the leading cause of major pollution in our rivers.

The new nonpoint source pollution program is also an important step forward.

In all, Mr. Speaker, this is an excellent bill, carefully thought out, and I commend the leadership for their staying power as well as their very strong commitment to the quality of our environment.

In closing, let me say that the staff on both sides have done an outstanding job. They have put in many overnight stands on this bill, and I commend our staff members as well as the leadership of the committee and urge the support of my colleagues of this Clean Water Act.

Mr. ROE. Mr. Speaker, I yield 1 minute to the gentleman from Indiana [Mr. Visclosky].

Mr. VISCLOSKY. Mr. Speaker, I rise in strong support of the bill. I would start by thanking Mr. Stangeland and Mr. Roe. They have been excellent to deal with; they have been meticulous in their preparation, and they have prepared a bill that is fiscally sound and environmentally responsible.

Particularly, I want to address a question of the cleanup of the tributaries and harbors in the Great Lakes. I think that this is a meaningful inclusion in this bill. We have a serious problem in northwest Indiana.

I would urge all Members to strongly support this bill and again conclude by thanking Mr. Roe and Mr. Stangeland for their outstanding leadership on this issue.

Mr. ROE. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey [Mr. Florio].

(Mr. FLORIO asked and was given permission to revise and extend his remarks.)

Mr. FLORIO. Mr. Speaker, I rise in support of the conference report on the Clean Water Act amendments of 1986. I would like to express my pleasure in being able to join my colleagues in considering this vital legislation to restore our Nation's water resources and ensure the protection of the quality of our rivers, our streams, and our lakes.

I am pleased that the conference agreement contains a key provision, I initiated which was approved by the House last year, that will have important implications for the residents of Pitman, NJ. This important clean lakes section authorizes funds for improving the water quality of our Nation's Lakes by funding demonstration programs at a number of contaminated lakes across the Nation and providing grants to the States for controlling nonpoint sources of pollution which are contributing to the degradation of water quality in lakes.

The clean lakes section authorized $3.5 million to clean up Alcyon Lake which adjoins Lipari Landfill in Pitman, NJ. Lipari has the dubious distinction of being the No. 1 site on the Superfund national priority list.

In January 1980, Pitman residents were officially told what they had suspected for a long time—that the lake where their children swam and played was contaminated with cancer causing chemicals. Alcyon Lake was closed at the time because a known carcinogen, BCEE [Bis-2-dichlorethyl ether], was found in the water. Analyses confirmed the worst fears of Pitman residents: toxic contaminants had indeed leached from Lipari landfill.

Currently, EPA is in the process of implementing their plan to clean up Lipari landfill by flushing water through the landfill for a number of years in order to remove the chemicals. I have, on many occasions, expressed my concern about this chosen process because of the uncertainty of its effectiveness, and because of the doubts that this process will truly clean Lipari and conform to the strict cleanup standards contained in the Superfund reauthorization.

To this point, however, EPA has still not released a plan to deal with the off-site contamination which includes Alcyon Lake. This $3.5 million will speed the recovery of Alcyon Lake by funding the removal and disposal of contaminated sediments in the lake. Once the project is compeleted, a report must be submitted to Congress recommending further cleanup measures. With this funding, there can be no further excuse to delaying the cleanup of Alcyon Lake.

Once again, the citizens of Pitman should be able to fish and swim safely in this body of water. This is a strong effort to restore Alcyon Lake as an environmentally sound natural resource, and a source of recreation, pride and beauty to the residents of Pitman and Gloucester county.

I commend the conferees, and especially my colleagues from New Jersey, Mr. HOWARD and Mr. ROE, for including this vital section in the conference agreement and for their perseverance over these many months to bring this agreement up for consideration. I urge my colleagues to join in supporting these efforts.

Mr. STANGELAND. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, in closing, let me say this: I want to again commend my chairman, Mr. ROE, with whom I have worked so closely on this legislation; and just salute him for the outstanding job he has done; the tenacity he has shown; and then commend the full water resources staff.

I will not name them all, but particularly Errol Tyler from the majority side, and John Doyle from the minority side, who have worked side-by-side with Mr. ROE as this bill has gone through the process. It would not be here if it was not for the further tenacity of the gentleman from New Jersey and the fact that our Senate colleagues worked together in conference to bring this to us.

This bill passed the House 340 to 83, the clean water bill, H.R. 8, and I would urge all of my colleagues to vote as the gentleman from New Jersey [Mr. FLORIO] said, unanimously for this. It is one of the soundest pieces of environmental legislation that this Congress will have a right to pass.

Mr. Speaker, I yield back the balance of my time.

Mr. ROE. Mr. Speaker, I yield myself the balance of my time. I want to conclude for our side and thank the staff particularly, who have done an outstanding job. There has been a great group of people who have worked over the years, particularly again, Mr. Errol Tyler and Mr. John Doyle, who are two leading staff members.

I certainly want to thank Mr. STANGELAND and Mr. SNYDER, and our full committee chairman, Mr. HOWARD, for all their work, and Dick Sullivan, our chief counsel, and all those that did so much on the bill. The conferees, and all the members of the committee.

I think that the House should review this bill as being critical to the future of this country, the water supply of this Nation, which is first and foremost for the health of the people of our country, and I would urge a unanimous vote by the House on this legislation.

Mr. Speaker, I yield back the balance of my time.

Mr. TOWNS. Mr. Speaker, as a conferee on H.R. 8, I want to ensure my colleagues that we worked long and hard, in a bipartisan fashion to develop a good bill. I believe the conference report on the Clean Water Reauthorization Act reflects the conferees effort to develop a balanced allocation formula for all States, a progressive change in the law on stormwater discharges along with a number of specific projects which are needed in various communities throughout this country to preserve a high standard of water quality. I am particularly pleased that the conference report retained House language to reimburse Brooklyn Union Gas for utility relocation costs in Brooklyn and Queens. Because of this provision, utility costs will be reduced to consumers in these areas. Finally, I would add that I hope that our work has not been in vain. I hope that the President will sign this bill; that he will not deprive communities around this Nation from the construction funds they need to improve or maintain good water quality. This is legislation that cities and counties have clamored for for the last 2 years. I hope that they will not be disappointed.

Mr. MOLINARI. Mr. Speaker, I would like to commend the conferees for completing work on the reauthorization of the Clean Water Act. This is an important step forward in our effort to safeguard our Nation's rivers, lakes, and estuaries. I am, however, very disappointed that my amendment to channel additional funds to the Interstate Sanitation Commission [ISC] was deleted from the final conference agreement.

During committee consideration of H.R. 8, the clean water reauthorization bill, I succeeded in attaching an amendment to the bill to earmark an additional $2 million for the ISC. These funds would come from New York, New Jersey, and Connecticut, the three States that the ISC serves. The ISC amendment had the solid backing of the House conferees, but was adamantly resisted by the other body's conferees. Finally, after it became evident that the other body would not even consider a compromise on this matter, the House conferees were forced to drop the ISC amendment from the conference report.

Mr. Speaker, let me stress that the additional funding called for under my amendment is crucial for the ISC. By way of background, the ISC is an environmental agency established by an interstate compact among New York, New Jersey, and Connecticut. The ISC has regulatory jurisdiction over water quality in the tidal waters of northeastern New Jersey, southeastern New York and southwestern Connecticut. ISC monitors water quality in the tristate area and has certain enforcement authority. In addition, ISC conducts an air quality monitoring program, although it has no enforcement authority in this regard.

Although ISC's responsibilities are extensive, its budget has traditionally been inadequate. Despite, these budget constraints, ISC has been able to perform a number of valuable tasks. Allow me to list some of these: First, ISC samples discharges from sewage treatment plants and industries in the tristate area more than the State agencies. In fact, New Jersey has left sampling almost exclusively to ISC; second, ISC performs routine sampling within the Interstate Sanitation district almost exclusively on an on-going basis; third, The ISC has reviewed approximately 301(h) waivers and denied concurrence in all instances. ISC's position on these waivers prevailed and none were issued; fourth, The commission is the coordinator of the regional high air pollution warning system for the tristate air quality control region; and, fifth, ISC is the only agency that logs and investigates air pollution complaints of an interstate nature.

Mr. Speaker, with adequate funding, ISC could do much more to protect the environment of the tristate region. In the area of air pollution, which is a serious problem in my district, ISC officials estimate that in 6 to 8 months the agency could develop its own air enforcement regulations and get an enforcement program underway. ISC believes that the first enforcement action could be undertaken at the end of the first year or the beginning of the second year of the program. However, without the additional moneys called for under my amendment, it will be extremely difficult for the ISC to establish such an air enforcement program. Indeed, many other valuable ISC environmental programs will probably have to be foregone because of insufficient funding.

Mr. Speaker, although I am disappointed that my ISC amendment was not included in the conference report, I would like to express my gratitude to Chairman Roe and the other House conferees for their strong and persistent support for the amendment. Their dedication to this worthy cause is most appreciated.

Mr. McCain. Mr. Speaker, I rise in strong support of the reauthorization of the Clean Water Act. The lack of reauthorization has resulted in delays and postponements in cleaning up our Nation's lakes, rivers and streams.

The enactment of this legislation will enable our communities to plan and to construct sewage treatment plants which are so essential to my own State of Arizona where the protection of our precious ground water supplies is so very critical.

This legislation represents Congress' commitment to our environment and to our future water supplies. The funding provided for in this legislation in loans and grants for new, publicly owned treatment plants over the next 8 years is the cornerstone of this measure and I feel will enable us to achieve the goal of having all domestic waste treated before being discharged into the Nation's waterways.

Mr. Speaker, this is a strong but a balanced bill. It deserves all of our support, not only for those we represent today, but more importantly for those who will inherit our Nation's resources. I urge my colleagues support for this urgently needed, and long overdue legislation.

Mr. HOWARD. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the

Speaker pro tempore announced that the ayes appeared to have it.

Mr. **HOWARD.** Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The **SPEAKER** pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 408, nays 0, not voting 24, as follows:

[Roll No. 470]

YEAS—408

Abercrombie
Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Archer
Armey
Aspin
Atkins
AuCoin
Barnard
Barnes
Bartlett
Barton
Bateman
Bates
Bedell
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Biaggi
Bilirakis
Bliley
Boehlert
Boggs
Boland
Boner (TN)
Bonior (MI)
Bonker
Borski
Bosco
Boucher
Boulter
Boxer
Broomfield
Brown (CA)
Brown (CO)
Bruce
Bryant
Burton (CA)
Burton (IN)
Bustamante
Byron
Callahan
Carney
Carper
Carr
Chandler
Chapman
Chappell
Chappie
Cheney
Clay
Clinger
Coats
Cobey
Coble
Coelho
Coleman (MO)
Coleman (TX)
Collins
Combest
Conte
Cooper
Coughlin
Courter
Coyne
Craig
Crane
Crockett
Daniel
Dannemeyer
Darden
Daschle
Daub
Davis
de la Garza
DeLay
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dornan (CA)
Dowdy
Downey
Dreier
Duncan
Durbin
Dwyer
Dymally
Dyson
Early
Eckart (OH)
Edgar
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Evans (IA)
Evans (IL)
Fascell
Fawell
Fazio
Feighan
Fiedler
Fields
Fish
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Franklin
Frenzel
Frost
Fuqua
Gallo
Garcia
Gaydos
Gejdenson
Gekas
Gephardt
Gibbons
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gordon
Gradison
Gray (IL)
Gray (PA)
Green
Gregg
Guarini
Gunderson
Hall (OH)
Hall, Ralph
Hamilton
Hammerschmidt
Hatcher
Hawkins
Hayes
Hefner
Hendon
Henry
Hertel
Hiler
Hillis
Holt
Hopkins
Horton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Ireland
Jacobs
Jeffords
Jenkins
Johnson
Jones (NC)
Jones (TN)
Kanjorski
Kaptur
Kasich
Kastenmeier
Kemp
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Kostmayer
LaFalce
Lagomarsino
Lantos
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Lent
Levin (MI)
Levine (CA)
Lewis (CA)
Lewis (FL)
Lightfoot
Lipinski
Livingston
Lloyd
Loeffler
Lott
Lowery (CA)
Lowry (WA)
Lujan
Luken
Lungren
Mack
MacKay
Madigan
Manton
Markey
Marlenee
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCurdy
McDade
McGrath
McHugh
McKernan
McKinney
McMillan
Meyers
Mica
Michel
Mikulski
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Mitchell
Moakley
Molinari
Mollohan
Monson
Montgomery
Moody
Moorhead
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Natcher
Neal
Nelson
Nielson
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens
Packard
Panetta
Parris
Pashayan
Pease
Penny
Pepper
Perkins
Petri
Pickle
Porter
Price
Pursell
Quillen
Rahall
Rangel
Ray
Regula
Reid
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Roemer
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Savage
Saxton
Schaefer
Scheuer
Schneider
Schroeder
Schuette
Schulze
Schumer
Seiberling
Sensenbrenner
Sharp
Shaw
Shelby
Shumway
Shuster
Sikorski
Siljander
Sisisky
Skeen
Skelton
Slattery
Slaughter
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Snyder
Solarz
Solomon
Spence
Spratt
Staggers
Stallings
Stangeland
Stark
Stenholm
Stokes
Strang
Stratton
Studds
Stump
Sundquist
Sweeney
Swift
Swindall
Synar
Tallon
Tauke
Tauzin
Taylor
Thomas (CA)
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Waldon
Walgren
Walker
Watkins
Waxman
Weaver
Weber
Wheat
Whitehurst
Whitley
Whittaker
Whitten
Williams
Wilson
Wirth
Wise
Wolf
Wolpe
Wortley
Wright
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)
Young (MO)
Zschau

NAYS—0

NOT VOTING—24

Badham
Breaux
Brooks
Campbell
Conyers
Eckert (NY)
Fowler
Grotberg
Hansen
Hartnett
Jones (OK)
Kindness
Kramer
Latta
Long
Lundine
McCain
McEwen
Moore
Nichols
Oxley
Rudd
St Germain
Weiss

□ 1900

Messrs. FAWELL, ARMEY, and CRANE changed their votes from "nay" to "yea."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

MOTION OFFERED BY MR. ROE

Mr. **ROE.** Mr Speaker, I move that the House insist on its amendment to the title of S. 1128.

The motion was agreed to.

A motion to reconsider was laid on the table.

99TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
99-1004

AMENDING THE CLEAN WATER ACT

OCTOBER 15, 1986.—Ordered to be printed

Mr. HOWARD, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 1128]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1128) to amend the Clean Water Act, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS; AMENDMENTS TO FEDERAL WATER POLLUTION CONTROL ACT; DEFINITION OF ADMINISTRATOR.

(a) SHORT TITLE.—This Act may be cited as the "Water Quality Act of 1986".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents; amendments to Federal Water Pollution Control Act; definition of Administrator.
Sec. 2. Limitation on payments.

TITLE I—AMENDMENTS TO TITLE I

Sec. 101. Authorizations of appropriations.
Sec. 102. Small flows clearinghouse.
Sec. 103. Chesapeake Bay.
Sec. 104. Great Lakes.
Sec. 105. Research on effects of pollutants.

TITLE II—CONSTRUCTION GRANTS AMENDMENTS

Sec. 201. Time limit on resolving certain disputes.
Sec. 202. Federal share.
Sec. 203. Agreement on eligible costs.
Sec. 204. Design/build projects.

Sec. 205. Grant conditions; user charges on low-income residential users.
Sec. 206. Allotment formula.
Sec. 207. Rural set aside.
Sec. 208. Innovative and alternative projects.
Sec. 209. Regional organization funding.
Sec. 210. Marine CSO's and estuaries.
Sec. 211. Authorization for construction grants.
Sec. 212. State water pollution control revolving funds.
Sec. 213. Improvement projects.
Sec. 214. Chicago tunnel and reservoir project.
Sec. 215. Ad valorem tax dedication.

TITLE III—STANDARDS AND ENFORCEMENTS

Sec. 301. Compliance dates.
Sec. 302. Modification for nonconventional pollutants.
Sec. 303. Discharges into marine waters.
Sec. 304. Filing deadline for treatment works modification.
Sec. 305. Innovative technology compliance deadlines for direct dischargers.
Sec. 306. Fundamentally different factors.
Sec. 307. Coal remining operations.
Sec. 308. Individual control strategies for toxic pollutants.
Sec. 309. Pretreatment standards.
Sec. 310. Inspection and entry.
Sec. 311. Marine sanitation devices.
Sec. 312. Criminal penalties.
Sec. 313. Civil penalties.
Sec. 314. Administrative penalties.
Sec. 315. Clean lakes.
Sec. 316. Management of nonpoint sources of pollution.
Sec. 317. National estuary program.
Sec. 318. Unconsolidated quaternary aquifer.

TITLE IV—PERMITS AND LICENSES

Sec. 401. Stormwater runoff from oil, gas, and mining operations.
Sec. 402. Additional pretreatment of conventional pollutants not required.
Sec. 403. Partial NPDES program.
Sec. 404. Anti-backsliding.
Sec. 405. Municipal and industrial stormwater discharges.
Sec. 406. Sewage sludge.
Sec. 407. Log transfer facilities.

TITLE V—MISCELLANEOUS PROVISIONS

Sec. 501. Audits.
Sec. 502. Commonwealth of the Northern Mariana Islands.
Sec. 503. Agricultural stormwater discharges.
Sec. 504. Protection of interests of United States in citizen suits.
Sec. 505. Judicial review and award of fees.
Sec. 506. Indian tribes.
Sec. 507. Definition of point source.
Sec. 508. Special provisions regarding certain dumping sites.
Sec. 509. Ocean discharge research project.
Sec. 510. San Diego, California.
Sec. 511. Limitation on discharge of raw sewage by New York City.
Sec. 512. Oakwood Beach and Red Hook Projects, New York.
Sec. 513. Boston Harbor and adjacent waters.
Sec. 514. Wastewater reclamation demonstration.
Sec. 515. Des Moines, Iowa.
Sec. 516. Study of de minimis discharges.
Sec. 517. Study of effectiveness of innovative and alternative processes and techniques.
Sec. 518. Study of testing procedures.
Sec. 519. Study of pretreatment of toxic pollutants.
Sec. 520. Studies of water pollution problems in aquifers.
Sec. 521. Great Lakes consumptive use study.
Sec. 522. Sulfide corrosion study.
Sec. 523. Study of rainfall induced infiltration into sewer systems.

Sec. 524. Dam water quality study.
Sec. 525. Study of pollution in Lake Pend Oreille, Idaho.

(c) AMENDMENT OF FEDERAL WATER POLLUTION CONTROL ACT.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Water Pollution Control Act.

(d) DEFINITION.—For purposes of this Act, the term "Administrator" means the Administrator of the Environmental Protection Agency.

SEC. 2. LIMITATION ON PAYMENTS.

No payments may be made under this Act except to the extent provided in advance in appropriation Acts.

TITLE I—AMENDMENTS TO TITLE I

SEC. 101. AUTHORIZATIONS OF APPROPRIATIONS.

(a) RESEARCH AND INVESTIGATIONS.—Section 104(u) is amended—

(1) in clause (1) by striking out "and" after "1975,", after "1980,", and after "1981,", and by inserting after "1982," the following: "such sums as may be necessary for fiscal years 1983 through 1985, and not to exceed $22,770,000 per fiscal year for each of the fiscal years 1986 through 1990,";

(2) in clause (2) by striking out "and" after "1981," and by inserting after "1982," the following: "such sums as may be necessary for fiscal years 1983 through 1985, and $3,000,000 per fiscal year for each of the fiscal years 1986 through 1990,"; and

(3) in clause (3) by striking out "and" after "1981," and by inserting after "1982," the following: "such sums as may be necessary for fiscal years 1983 through 1985, and $1,500,000 per fiscal year for each of the fiscal years 1986 through 1990,".

(b) GRANTS FOR PROGRAM ADMINISTRATION.—Section 106(a)(2) is amended by inserting after "1982" the following: ", such sums as may be necessary for fiscal years 1983 through 1985, and $75,000,000 per fiscal year for each of the fiscal years 1986 through 1990".

(c) TRAINING GRANTS AND SCHOLARSHIPS.—Section 112(c) is amended by striking out "and" after "1981," and by inserting after "1982," the following: "such sums as may be necessary for fiscal years 1983 through 1985, and $7,000,000 per fiscal year for each of the fiscal years 1986 through 1990,".

(d) AREAWIDE PLANNING.—Section 208(f)(3) is amended by striking out "and" after "1974," and after "1980," and by inserting after "1982" the following: ", and such sums as may be necessary for fiscal years 1983 through 1990".

(e) RURAL CLEAN WATER.—Section 208(j)(9) is amended by striking out "and" after "1981," and by inserting after "1982," the following: "and such sums as may be necessary for fiscal years 1983 through 1990,".

(f) INTERAGENCY AGREEMENTS.—Section 304(k)(3) is amended by inserting after "1983" the following: "and such sums as may be necessary for fiscal years 1984 through 1990".

(g) Clean Lakes.—Section 314(c)(2) is amended by striking out "and" after "1981," and by inserting after "1982" the following: ", such sums as may be necessary for fiscal years 1983 through 1985, and $30,000,000 per fiscal year for each of the fiscal years 1986 through 1990".

(h) General Authorization.—Section 517 is amended by striking out "and" after "1981," and by inserting after "1982" the following: ", such sums as may be necessary for fiscal years 1983 through 1985, and $135,000,000 per fiscal year for each of the fiscal years 1986 through 1990".

SEC. 102. SMALL FLOWS CLEARINGHOUSE.

Section 104(q) is amended by adding at the end thereof the following new paragraph:

> *"(4) Small flows clearinghouse.—Notwithstanding section 205(d) of this Act, from amounts that are set aside for a fiscal year under section 205(i) of this Act and are not obligated by the end of the 24-month period of availability for such amounts under section 205(d), the Administrator shall make available $1,000,000 or such unobligated amount, whichever is less, to support a national clearinghouse within the Environmental Protection Agency to collect and disseminate information on small flows of sewage and innovative or alternative wastewater treatment processes and techniques, consistent with paragraph (3). This paragraph shall apply with respect to amounts set aside under section 205(i) for which the 24-month period of availability referred to in the preceding sentence ends on or after September 30, 1986.".*

SEC. 103. CHESAPEAKE BAY.

Title I is amended by adding at the end the following new section:

"SEC. 117. CHESAPEAKE BAY.

"(a) Office.—The Administrator shall continue the Chesapeake Bay Program and shall establish and maintain in the Environmental Protection Agency an office, division, or branch of Chesapeake Bay Programs to—

> *"(1) collect and make available, through publications and other appropriate means, information pertaining to the environmental quality of the Chesapeake Bay (hereinafter in this subsection referred to as the "Bay");*
>
> *"(2) coordinate Federal and State efforts to improve the water quality of the Bay;*
>
> *"(3) determine the impact of sediment deposition in the Bay and identify the sources, rates, routes, and distribution patterns of such sediment deposition; and*
>
> *"(4) determine the impact of natural and man-induced environmental changes on the living resources of the Bay and the relationships among such changes, with particular emphasis placed on the impact of pollutant loadings of nutrients, chlorine, acid precipitation, dissolved oxygen, and toxic pollutants, including organic chemicals and heavy metals, and with special attention given to the impact of such changes on striped bass.*

"(b) INTERSTATE DEVELOPMENT PLAN GRANTS.—

"(1) AUTHORITY.—The Administrator shall, at the request of the Governor of a State affected by the interstate management plan developed pursuant to the Chesapeake Bay Program (hereinafter in this section referred to as 'the plan'), make a grant for the purpose of implementing the management mechanisms contained in the plan if such State has, within 1 year after the date of the enactment of this section, approved and committed to implement all or substantially all aspects of the plan. Such grants shall be made subject to such terms and conditions as the Administrator considers appropriate.

"(2) SUBMISSION OF PROPOSAL.—A State or combination of States may elect to avail itself of the benefits of this subsection by submitting to the Administrator a comprehensive proposal to implement management mechanisms contained in the plan which shall include (A) a description of proposed abatement actions which the State or combination of States commits to take within a specified time period to reduce pollution in the Bay and to meet applicable water quality standards, and (B) the estimated cost of the abatement actions proposed to be taken during the next fiscal year. If the Administrator finds that such proposal is consistent with the national policies set forth in section 101(a) of this Act and will contribute to the achievement of the national goals set forth in such section, the Administrator shall approve such proposal and shall finance the costs of implementing segments of such proposal.

"(3) FEDERAL SHARE.—Grants under this subsection shall not exceed 50 percent of the costs of implementing the management mechanisms contained in the plan in any fiscal year and shall be made on condition that non-Federal sources provide the remainder of the cost of implementing the management mechanisms contained in the plan during such fiscal year.

"(4) ADMINISTRATIVE COSTS.—Administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against programs or projects supported by funds made available under this subsection shall not exceed in any one fiscal year 10 percent of the annual Federal grant made to a State under this subsection.

"(c) REPORTS.—Any State or combination of States that receives a grant under subsection (b) shall, within 18 months after the date of receipt of such grant and biennially thereafter, report to the Administrator on the progress made in implementing the interstate management plan developed pursuant to the Chesapeake Bay Program. The Administrator shall transmit each such report along with the comments of the Administrator on such report to Congress.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purposes of this section:

"(1) $3,000,000 per fiscal year for each of the fiscal years 1987, 1988, 1989, and 1990, to carry out subsection (a); and

"(2) $10,000,000 per fiscal year for each of the fiscal years 1987, 1988, 1989, and 1990, for grants to States under subsection (b).".

SEC. 104. GREAT LAKES.

Title I is amended by adding at the end the following new section:

"SEC. 118. GREAT LAKES.

"(a) FINDINGS, PURPOSE, AND DEFINITIONS.—

"(1) FINDINGS.—The Congress finds that—

"(A) the Great Lakes are a valuable national resource, continuously serving the people of the United States and other nations as an important source of food, fresh water, recreation, beauty, and enjoyment;

"(B) the United States should seek to attain the goals embodied in the Great Lakes Water Quality Agreement of 1978 with particular emphasis on goals related to toxic pollutants; and

"(C) the Environmental Protection Agency should take the lead in the effort to meet those goals, working with other Federal agencies and State and local authorities.

"(2) PURPOSE.—It is the purpose of this section to achieve the goals embodied in the Great Lakes Water Quality Agreement of 1978 through improved organization and definition of mission on the part of the Agency, funding of State grants for pollution control in the Great Lakes area, and improved accountability for implementation of such agreement.

"(3) DEFINITIONS.—For purposes of this section, the term—

"(A) 'Agency' means the Environmental Protection Agency;

"(B) 'Great Lakes' means Lake Ontario, Lake Erie, Lake Huron (including Lake St. Clair), Lake Michigan, and Lake Superior, and the connecting channels (Saint Mary's River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian Border);

"(C) 'Great Lakes System' means all the streams, rivers, lakes, and other bodies of water within the drainage basin of the Great Lakes;

"(D) 'Program Office' means the Great Lakes National Program Office established by this section; and

"(E) 'Research Office' means the Great Lakes Research Office established by subsection (d).

"(b) GREAT LAKES NATIONAL PROGRAM OFFICE.—The Great Lakes National Program Office (previously established by the Administrator) is hereby established within the Agency. The Program Office shall be headed by a Director who, by reason of management experience and technical expertise relating to the Great Lakes, is highly qualified to direct the development of programs and plans on a variety of Great Lakes issues. The Great Lakes National Program Office shall be located in a Great Lakes State.

"(c) GREAT LAKES MANAGEMENT.—

"(1) FUNCTIONS.—The Program Office shall—

"(A) in cooperation with appropriate Federal, State, tribal, and international agencies, and in accordance with section 101(e) of this Act, develop and implement specific action plans to carry out the responsibilities of the United

States under the Great Lake Water Quality Agreement of 1978;

"(B) establish a Great Lakes system-wide surveillance network to monitor the water quality of the Great Lakes, with specific emphasis on the monitoring of toxic pollutants;

"(C) serve as the liaison with, and provide information to, the Canadian members of the International Joint Commission and the Canadian counterpart to the Agency;

"(D) coordinate actions of the Agency (including actions by headquarters and regional offices thereof) aimed at improving Great Lakes water quality; and

"(E) coordinate actions of the Agency with the actions of other Federal agencies and State and local authorities, so as to ensure the input of those agencies and authorities in developing water quality strategies and obtain the support of those agencies and authorities in achieving the objectives of such agreement.

"(2) 5-YEAR PLAN AND PROGRAM.—The Program Office shall develop, in consultation with the states, a five-year plan and program for reducing the amount of nutrients introduced into the Great Lakes. Such program shall incorporate any management program for reducing nutrient runoff from nonpoint sources established under section 319 of this Act and shall include a program for monitoring nutrient runoff into, and ambient levels in, the Great Lakes.

"(3) 5-YEAR STUDY AND DEMONSTRATION PROJECTS.—The Program Office shall carry out a five year study and demonstration projects relating to the control and removal of toxic pollutants in the Great Lakes, with emphasis on the removal of toxic pollutants from bottom sediments. In selecting locations for conducting demonstration projects under this paragraph, priority consideration shall be given to projects at the following locations: Saginaw Bay, Michigan; Sheboygan Harbor, Wisconsin; Grand Calumet River, Indiana; Ashtabula River, Ohio; and Buffalo River, New York.

"(4) ADMINISTRATOR'S RESPONSIBILITY.—The Administrator shall ensure that the Program Office enters into agreements with the various organizational elements of the Agency involved in Great Lakes activities and the appropriate State agencies specifically delineating—

"(A) the duties and responsibilities of each such element in the Agency with respect to the Great Lakes;

"(B) the time periods for carrying out such duties and responsibilities; and

"(C) the resources to be committed to such duties and responsibilities.

"(5) BUDGET ITEM.—The Administrator shall, in the Agency's annual budget submission to Congress, include a funding request for the Program Office as a separate budget line item.

"(6) COMPREHENSIVE REPORT.—Within 90 days after the end of each fiscal year, the Administrator shall submit to Congress a comprehensive report which—

"(A) describes the achievements in the preceding fiscal year in implementing the Great Lakes Water Quality Agreement of 1978 and shows by categories (including judicial enforcement, research, State cooperative efforts, and general administration) the amounts expended on Great Lakes water quality initiatives in such preceding fiscal year;

"(B) describes the progress made in such preceding fiscal year in implementing the system of surveillance of the water quality in the Great Lakes system, including the monitoring of groundwater and sediment, with particular reference to toxic pollutants;

"(C) describes the long-term prospects for improving the condition of the Great Lakes; and

"(D) provides a comprehensive assessment of the planned efforts to be pursued in the succeeding fiscal year for implementing the Great Lakes Water Quality Agreement of 1978, which assessment shall—

"(i) show by categories (including judicial enforcement, research, State cooperative efforts, and general administration) the amount anticipated to be expended on Great Lakes water quality initiatives in the fiscal year to which the assessment relates; and

"(ii) include a report of current programs administered by other Federal agencies which make available resources to the Great Lakes water quality management efforts.

"(d) GREAT LAKES RESEARCH.—

"(1) ESTABLISHMENT OF RESEARCH OFFICE.—There is established within the National Oceanic and Atmospheric Administration the Great Lakes Research Office.

"(2) IDENTIFICATION OF ISSUES.—The Research Office shall identify issues relating to the Great Lakes resources on which research is needed. The Research Office shall submit a report to Congress on such issues before the end of each fiscal year which shall identify any changes in the Great Lakes system with respect to such issues.

"(3) INVENTORY.—The Research Office shall identify and inventory Federal, State, university, and tribal environmental research programs (and, to the extent feasible, those of private organizations and other nations) relating to the Great Lakes system, and shall update that inventory every four years.

"(4) RESEARCH EXCHANGE.—The Research Office shall establish a Great Lakes research exchange for the purpose of facilitating the rapid identification, acquisition, retrieval, dissemination, and use of information concerning research projects which are on-going or completed and which affect the Great Lakes system.

"(5) RESEARCH PROGRAM.—The Research Office shall develop, in cooperation with the Coordination Office, a comprehensive environmental research program and data base for the Great Lakes system. The data base shall include, but not be limited to, data relating to water quality, fisheries, and biota.

"(6) MONITORING.—The Research Office shall conduct, through the Great Lakes Environmental Research Laboratory,

the National Sea Grant College program, other Federal laboratories, and the private sector, appropriate research and monitoring activities which address priority issues and current needs relating to the Great Lakes.

"(7) Location.—The Research Office shall be located in a Great Lakes State.

"(e) Research and Management Coordination.—

"(1) Joint plan.—Before October 1 of each year, the Program Office and the Research Office shall prepare a joint research plan for the fiscal year which begins in the following calendar year.

"(2) Contents of plan.—Each plan prepared under paragraph (1) shall—

"(A) identify all proposed research dedicated to activities conducted under the Great Lakes Water Quality Agreement of 1978;

"(B) include the Agency's assessment of priorities for research needed to fulfill the terms of such Agreement; and

"(C) identify all proposed research that may be used to develop a comprehensive environmental data base for the Great Lakes system and establish priorities for development of such data base.

"(f) Interagency Cooperation.—The head of each department, agency, or other instrumentality of the Federal Government which is engaged in, is concerned with, or has authority over programs relating to research, monitoring, and planning to maintain, enhance, preserve, or rehabilitate the environmental quality and natural resources of the Great Lakes, including the Chief of Engineers of the Army, the Chief of the Soil Conservation Service, the Commandant of the Coast Guard, the Director of the Fish and Wildlife Service, and the Administrator of the National Oceanic and Atmospheric Administration, shall submit an annual report to the Administrator with respect to the activities of that agency or office affecting compliance with the Great Lakes Water Quality Agreement of 1978.

"(g) Relationship to Existing Federal and State Laws and International Treaties.—Nothing in this section shall be construed to affect the jurisdiction, powers, or prerogatives of any department, agency, or officer of the Federal Government or of any State government, or of any tribe, nor any powers, jurisdiction, or prerogatives of any international body created by treaty with authority relating to the Great Lakes.

"(h) Authorizations of Great Lakes Appropriations.—There are authorized to be appropriated to the Administrator to carry out this section not to exceed $11,000,000 per fiscal year for the fiscal years 1987, 1988, 1989, 1990, and 1991. Of the amounts appropriated each fiscal year—

"(1) 40 percent shall be used by the Great Lakes National Program Office on demonstration projects on the feasibility of controlling and removing toxic pollutants;

"(2) 7 percent shall be used by the Great Lakes National Program Office for the program of nutrient monitoring; and

"(3) 30 percent shall be transferred to the National Oceanic and Atmospheric Administration for use by the Great Lakes Research Office.".

SEC. 105. RESEARCH ON EFFECTS OF POLLUTANTS.

In carrying out the provisions of section 104(a) of the Federal Water Pollution Control Act, the Administrator shall conduct research on the harmful effects on the health and welfare of persons caused by pollutants in water, in conjunction with the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and other Federal, State, and interstate agencies carrying on such research. Such research shall include, and shall place special emphasis on, the effect that bioaccumulation of these pollutants in aquatic species has upon reducing the value of aquatic commercial and sport industries. Such research shall further study methods to reduce and remove these pollutants from the relevant affected aquatic species so as to restore and enhance these valuable resources.

TITLE II—CONSTRUCTION GRANTS AMENDMENTS

SEC. 201. TIME LIMIT ON RESOLVING CERTAIN DISPUTES.

Section 201 is amended by adding at the end thereof the following new subsection:

"(p) TIME LIMIT ON RESOLVING CERTAIN DISPUTES.—In any case in which a dispute arises with respect to the awarding of a contract for construction of treatment works by a grantee of funds under this title and a party to such dispute files an appeal with the Administrator under this title for resolution of such dispute, the Administrator shall make a final decision on such appeal within 90 days of the filing of such appeal.".

SEC. 202. FEDERAL SHARE.

(a) LIMITATION ON ELIGIBILITY AFTER 1990.—The last sentence of section 202(a)(1) is amended by inserting before the period at the end the following: "for any grant made pursuant to a State obligation which obligation occurred before October 1, 1990,".

(b) PROJECTS UNDER JUDICIAL INJUNCTION.—Section 202(a)(1) is amended by adding at the end thereof the following: "Notwithstanding the first sentence of this paragraph, in the case of a project for which an application for a grant under this title has been made to the Administrator before October 1, 1984, and which project is under judicial injunction on such date prohibiting its construction, such project shall be eligible for grants at 75 percent of the cost of construction thereof.".

(c) PROJECTS UNDER JUDICIAL ORDER AND OTHER PROJECTS.—Section 202(a)(1) is amended by adding at the end thereof the following: "Notwithstanding the first sentence of this paragraph, in the case of the Wyoming Valley Sanitary Authority project mandated by judicial order under a proceeding begun prior to October 1, 1984, and a project for wastewater treatment for Altoona, Pennsylvania, such projects shall be eligible for grants at 75 percent of the cost of construction thereof.".

(d) BIODISC EQUIPMENT.—Section 202(a)(3) is amended by adding at the end thereof the following: "In addition, the Administrator is authorized to make a grant to fund all of the costs of the modifica-

tion or replacement of biodisc equipment (rotating biological contactors) in any publicly owned treatment works if the Administrator finds that such equipment has failed to meet design performance specifications, unless such failure is attributable to negligence on the part of any person, and if such failure has significantly increased capital or operating and maintenance expenditures.".

(e) INNOVATIVE PROCESS.—The activated bio-filter feature of the project for treatment works of the city of Little Falls, Minnesota, shall be deemed to be an innovative wastewater process and technique for purposes of section 202(a)(2) of the Federal Water Pollution Control Act and the amount of any grant under such Act for such feature shall be 85 percent of the cost thereof.

(f) AVAILABILITY OF CERTAIN FUNDS FOR NON-FEDERAL SHARE.—Notwithstanding any other provision of law, Federal assistance made available by the Farmers Home Administration to any political subdivision of a State may be used to provide the non-Federal share of the cost of any construction project carried out under section 201 of the Federal Water Pollution Control Act.

SEC. 203. AGREEMENT ON ELIGIBLE COSTS.

Section 203(a) is amended by inserting "(1)" after "(a)", by designating the last sentence as paragraph (3) and indenting such sentence as a paragraph, and by inserting before paragraph (3) as so designated the following:

"(2) AGREEMENT ON ELIGIBLE COSTS.—

"(A) LIMITATION ON MODIFICATIONS.—Before taking final action on any plans, specifications, and estimates submitted under this subsection after the 60th day following the date of the enactment of the Water Quality Act of 1986, the Administrator shall enter into a written agreement with the applicant which establishes and specifies which items of the proposed project are eligible for Federal payments under this section. The Administrator may not later modify such eligibility determinations unless they are found to have been made in violation of applicable Federal statutes and regulations.

"(B) LIMITATION ON EFFECT.—Eligibility determinations under this paragraph shall not preclude the Administrator from auditing a project pursuant to section 501 of this Act, or other authority, or from withholding or recovering Federal funds for costs which are found to be unreasonable, unsupported by adequate documentation, or otherwise unallowable under applicable Federal cost principles, or which are incurred on a project which fails to meet the design specifications or effluent limitations contained in the grant agreement and permit pursuant to section 402 of this Act for such project.".

SEC. 204. DESIGN/BUILD PROJECTS.

Section 203 is amended by adding at the end the following new subsection:

"(f) DESIGN/BUILD PROJECTS.—

"(1) AGREEMENT.—Consistent with State law, an applicant who proposes to construct waste water treatment works may enter into an agreement with the Administrator under this sub-

section providing for the preparation of construction plans and specifications and the erection of such treatment works, in lieu of proceeding under the other provisions of this section.

"(2) Limitation on projects.—Agreements under this subsection shall be limited to projects under an approved facility plan which projects are—

"(A) treatment works that have an estimated total cost of $8,000,000 or less; and

"(B) any of the following types of waste water treatment systems: aerated lagoons, trickling filters, stabilization ponds, land application systems, sand filters, and subsurface disposal systems.

"(3) Required terms.—An agreement entered into under this subsection shall—

"(A) set forth an amount agreed to as the maximum Federal contribution to the project, based upon a competitively bid document of basic design data and applicable standard construction specifications and a determination of the federally eligible costs of the project at the applicable Federal share under section 202 of this Act;

"(B) set forth dates for the start and completion of construction of the treatment works by the applicant and a schedule of payments of the Federal contribution to the project;

"(C) contain assurances by the applicant that (i) engineering and management assistance will be provided to manage the project; (ii) the proposed treatment works will be an operable unit and will meet all the requirements of this title; and (iii) not later than 1 year after the date specified as the date of completion of construction of the treatment works, the treatment works will be operating so as to meet the requirements of any applicable permit for such treatment works under section 402 of this Act;

"(D) require the applicant to obtain a bond from the contractor in an amount determined necessary by the Administrator to protect the Federal interest in the project; and

"(E) contain such other terms and conditions as are necessary to assure compliance with this title (except as provided in paragraph (4) of this subsection).

"(4) Limitation on application.—Subsections (a), (b), and (c) of this section shall not apply to grants made pursuant to this subsection.

"(5) Reservation to assure compliance.—The Administrator shall reserve a portion of the grant to assure contract compliance until final project approval as defined by the Administrator. If the amount agreed to under paragraph (3)(A) exceeds the cost of designing and constructing the treatment works, the Administrator shall reallot the amount of the excess to the State in which such treatment works are located for the fiscal year in which such audit is completed.

"(6) Limitation on obligations.—The Administrator shall not obligate more than 20 percent of the amount allotted to a State for a fiscal year under section 205 of this Act for grants pursuant to this subsection.

"(7) ALLOWANCE.—*The Administrator shall determine an allowance for facilities planning for projects constructed under this subsection in accordance with section 201(l).*

"(8) LIMITATION ON FEDERAL CONTRIBUTIONS.—*In no event shall the Federal contribution for the cost of preparing construction plans and specifications and the building and erection of treatment works pursuant to this subsection exceed the amount agreed upon under paragraph (3).*

"(9) RECOVERY ACTION.—*In any case in which the recipient of a grant made pursuant to this subsection does not comply with the terms of the agreement entered into under paragraph (3), the Administrator is authorized to take such action as may be necessary to recover the amount of the Federal contribution to the project.*

"(10) PREVENTION OF DOUBLE BENEFITS.—*A recipient of a grant made pursuant to this subsection shall not be eligible for any other grants under this title for the same project.".*

SEC. 205. GRANT CONDITIONS; USER CHARGES ON LOW-INCOME RESIDENTIAL USERS.

(a) INCLUSION OF PROJECT IN AREAWIDE PLAN.—*Section 204(a)(1) is amended to read as follows:*

"(1) that any required areawide waste treatment management plan under section 208 of this Act (A) is being implemented for such area and the proposed treatment works are included in such plan, or (B) is being developed for such area and reasonable progress is being made toward its implementation and the proposed treatment works will be included in such plan;".

(b) CONTINUING PLANNING PROCESS.—*Section 204(a)(2) is amended to read as follows:*

"(2) that (A) the State in which the project is to be located (i) is implementing any required plan under section 303(e) of this Act and the proposed treatment works are in conformity with such plan, or (ii) is developing such a plan and the proposed treatment works will be in conformity with such plan, and (B) such State is in compliance with section 305(b) of this Act;".

(c) USER CHARGES ON LOW-INCOME RESIDENTIAL USERS.—*Section 204(b)(1) is amended by adding at the end thereof the following: "A system of user charges which imposes a lower charge for low-income residential users (as defined by the Administrator) shall be deemed to be a user charge system meeting the requirements of clause (A) of this paragraph if the Administrator determines that such system was adopted after public notice and hearing.".*

(d) EFFECTIVE DATE.—*This section shall take effect on the date of the enactment of this Act, except that the amendments made by subsections (a) and (b) shall take effect on the last day of the two-year period beginning on such date of enactment.*

SEC. 206. ALLOTMENT FORMULA.

(a) FORMULA.—

(1) EXTENSION OF EXISTING FORMULA FOR 1986.—*Section 205(c)(2) is amended by striking out "and September 30, 1985," and inserting in lieu thereof "September 30, 1985, and September 30, 1986,".*

(2) FISCAL YEARS 1987–1990.—Section 205(c) is amended by adding at the end the following new paragraph:

“(3) FISCAL YEARS 1987–1990.—Sums authorized to be appropriated pursuant to section 207 for the fiscal years 1987, 1988, 1989, and 1990 shall be allotted for each such year by the Administrator not later than the 10th day which begins after the date of the enactment of this paragraph. Sums authorized for such fiscal years shall be allotted in accordance with the following table:

“States:

Alabama	*.011309*
Alaska	*.006053*
Arizona	*.006831*
Arkansas	*.006616*
California	*.072333*
Colorado	*.008090*
Connecticut	*.012390*
Delaware	*.004965*
District of Columbia	*.004965*
Florida	*.034139*
Georgia	*.017100*
Hawaii	*.007833*
Idaho	*.004965*
Illinois	*.045741*
Indiana	*.024374*
Iowa	*.013688*
Kansas	*.009129*
Kentucky	*.012872*
Louisiana	*.011118*
Maine	*.007829*
Maryland	*.024461*
Massachusetts	*.034338*
Michigan	*.043487*
Minnesota	*.018589*
Mississippi	*.009112*
Missouri	*.028037*
Montana	*.004965*
Nebraska	*.005173*
Nevada	*.004965*
New Hampshire	*.010107*
New Jersey	*.041329*
New Mexico	*.004965*
New York	*.111632*
North Carolina	*.018253*
North Dakota	*.004965*
Ohio	*.056936*
Oklahoma	*.008171*
Oregon	*.011425*
Pennsylvania	*.040062*
Rhode Island	*.006791*
South Carolina	*.010361*
South Dakota	*.004965*
Tennessee	*.014692*
Texas	*.046226*
Utah	*.005329*
Vermont	*.004965*
Virginia	*.020698*
Washington	*.017588*
West Virginia	*.015766*
Wisconsin	*.027342*
Wyoming	*.004965*
America Samoa	*.000908*
Guam	*.000657*
Northern Marianas	*.000422*

Puerto Rico	*.013191*
Pacific Trust Territories	*.001295*
Virgin Islands	*.000527".*

(b) EXTENSION OF MINIMUM ALLOTMENTS.—Section 205(e) is amended by striking out "and 1985" each place it appears and inserting in lieu thereof "1985, 1986, 1987, 1988, 1989, and 1990".

(c) COSTS OF ADMINISTRATION.—Section 205(g)(1) is amended by striking out "October 1, 1985" and inserting in lieu thereof "October 1, 1994".—

(d) CONTROL OF POLLUTANTS FROM STORM SEWERS.—Section 211(e) is amended by striking out "1985," and inserting in lieu thereof "1990,".

SEC. 207. RURAL SET ASIDE.

(a) INCREASE IN MANDATORY SET ASIDE FOR RURAL STATES.—The first sentence of section 205(h) is amended by striking out "four per centum" and inserting in lieu thereof "a total (as determined by the Governor of the State) of not less than 4 percent nor more than 7½ percent".

(b) INCREASE IN AUTHORIZED SET ASIDE FOR OTHER STATES.—The second sentence of section 205(h) is amended by striking out "four per centum" and inserting in lieu thereof "7½ percent".

SEC. 208. INNOVATIVE AND ALTERNATIVE PROJECTS.

Section 205(i) is amended to read as follows:

"(i) SET-ASIDE FOR INNOVATIVE AND ALTERNATIVE PROJECTS.—Not less than ½ of 1 percent of funds allotted to a State for each of the fiscal years ending September 30, 1979, through September 30, 1990, under subsection (c) of this section shall be expended only for increasing the Federal share of grants for construction of treatment works utilizing innovative processes and techniques pursuant to section 202(a)(2) of this Act. Including the expenditures authorized by the preceding sentence, a total of 2 percent of the funds allotted to a State for each of the fiscal years ending September 30, 1979, and September 30, 1980, and 3 percent of the funds allotted to a State for the fiscal year ending September 30, 1981, under subsection (c) of this section shall be expended only for increasing grants for construction of treatment works pursuant to section 202(a)(2) of this Act. Including the expenditures authorized by the first sentence of this subsection, a total (as determined by the Governor of the State) of not less than 4 percent nor more than 7½ percent of the funds allotted to such State under subsection (c) of this section for each of the fiscal years ending September 30, 1982, through September 30, 1990, shall be expended only for increasing the Federal share of grants for construction of treatment works pursuant to section 202(a)(2) of this Act.".

SEC. 209. REGIONAL ORGANIZATION FUNDING.

Section 205(j)(3) is amended by adding at the end thereof the following: "In giving such priority, the State shall allocate at least 40 percent of the amount granted to such State for a fiscal year under paragraph (2) of this subsection to regional public comprehensive planning organizations in such State and appropriate interstate organizations for the development and implementation of the plan described in this paragraph. In any fiscal year for which the Governor, in consultation with such organizations and with the approval *of the Administrator, determines that allocation of at least 40 percent of such amount to such organizations will not result in significant participation by such organizations in water quality management planning and not significantly assist in development and implementation of the plan described in this paragraph and achieving the goals of this Act, the allocation to such organization may be less than 40 percent of such amount.".*

SEC. 210. MARINE CSO'S AND ESTUARIES.

Section 205 is amended by adding at the end thereof the following new subsection:

"(l) MARINE ESTUARY RESERVATION.—

"(1) RESERVATION OF FUNDS.—

"(A) GENERAL RULE.—Prior to making allotments among the States under subsection (c) of this section, the Administrator shall reserve funds from sums appropriated pursuant to section 207 for each fiscal year beginning after September 30, 1986.

"(B) FISCAL YEARS 1987 AND 1988.—For each of fiscal years 1987 and 1988 the reservation shall be 1 percent of the sums appropriated pursuant to section 207 for such fiscal year.

"(C) FISCAL YEARS 1989 AND 1990.—For each of fiscal years 1989 and 1990 the reservation shall be 1½ percent of the funds appropriated pursuant to section 207 for such fiscal year.

"(2) USE OF FUNDS.—Of the sums reserved under this subsection, two-thirds shall be available to address water quality problems of marine bays and estuaries subject to lower levels of water quality due to the impacts of discharges from combined storm water and sanitary sewer overflows from adjacent urban complexes, and one-third shall be available for the implementation of section 320 of this Act, relating to the national estuary program.

"(3) PERIOD OF AVAILABILITY.—Sums reserved under this subsection shall be subject to the period of availability for obligation established by subsection (d) of this section.

"(4) TREATMENT OF CERTAIN BODY OF WATER.—For purposes of this section and section 201(n), Newark Bay, New Jersey, and the portion of the Passaic River up to Little Falls, in the vicinity of Beatties Dam, shall be treated as a marine bay and estuary.".

SEC. 211. AUTHORIZATIONS FOR CONSTRUCTION GRANTS.

Section 207 is amended by striking out the period at the end thereof and inserting in lieu thereof the following: "; and for each of the fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1988, not to exceed $2,400,000,000; and for each of the fiscal years ending September 30, 1989, and September 30, 1990, not to exceed $1,200,000,000.".

SEC. 212. STATE WATER POLLUTION CONTROL REVOLVING FUNDS.

(a) ESTABLISHMENT OF PROGRAM.—The Act is amended by adding at the end thereof the following new title:

"TITLE VI—STATE WATER POLLUTION CONTROL REVOLVING FUNDS

"SEC. 601. GRANTS TO STATES FOR ESTABLISHMENT OF REVOLVING FUNDS.

"(a) General Authority.—Subject to the provisions of this title, the Administrator shall make capitalization grants to each State for the purpose of establishing a water pollution control revolving fund for providing assistance (1) for construction of treatment works (as defined in section 212 of this Act) which are publicly owned, (2) for implementing a management program under section 319, and (3) for developing and implementing a conservation and management plan under section 320.

"(b) Schedule of Grant Payments.—The Administrator and each State shall jointly establish a schedule of payments under which the Administrator will pay to the State the amount of each grant to be made to the State under this title. Such schedule shall be based on the State's intended use plan under section 606(c) of this Act, except that—

"(1) such payments shall be made in quarterly installments, and

"(2) such payments shall be made as expeditiously as possible, but in no event later than the earlier of—

"(A) 8 quarters after the date such funds were obligated by the State, or

"(B) 12 quarters after the date such funds were allotted to the State.

"SEC. 602. CAPITALIZATION GRANT AGREEMENTS.

"(a) General Rule.—To receive a capitalization grant with funds made available under this title and section 205(m) of this Act, a State shall enter into an agreement with the Administrator which shall include but not be limited to the specifications set forth in subsection (b) of this section.

"(b) Specific Requirements.—The Administrator shall enter into an agreement under this section with a State only after the State has established to the satisfaction of the Administrator that—

"(1) the State will accept grant payments with funds to be made available under this title and section 205(m) of this Act in accordance with a payment schedule established jointly by the Administrator under section 601(b) of this Act and will deposit all such payments in the water pollution control revolving fund established by the State in accordance with this title;

"(2) the State will deposit in the fund from State moneys an amount equal to at least 20 percent of the total amount of all capitalization grants which will be made to the State with funds to be made available under this title and section 205(m) of this Act on or before the date on which each quarterly grant payment will be made to the State under this title;

"(3) the State will enter into binding commitments to provide assistance in accordance with the requirements of this title in an amount equal to 120 percent of the amount of each such grant payment within 1 year after the receipt of such grant payment;

"(4) all funds in the fund will be expended in an expeditious and timely manner;

"(5) all funds in the fund as a result of capitalization grants under this title and section 205(m) of this Act will first be used to assure maintenance of progress, as determined by the Governor of the State, toward compliance with enforceable deadlines, goals, and requirements of this Act, including the municipal compliance deadline;

"(6) treatment works eligible under section 603(c)(1) of this Act which will be constructed in whole or in part before fiscal year 1995 with funds directly made available by capitalization grants under this title and section 205(m) of this Act will meet the requirements of, or otherwise be treated (as determined by the Governor of the State) under sections 201(b), 201(g)(1), 201(g)(2), 201(g)(3), 201(g)(5), 201(g)(6), 201(n)(1), 201(o), 204(a)(1), 204(a)(2), 204(b)(1), 204(d)(2), 211, 218, 511(c)(1), and 513 of this Act in the same manner as treatment works constructed with assistance under title II of this Act;

"(7) in addition to complying with the requirements of this title, the State will commit or expend each quarterly grant payment which it will receive under this title in accordance with laws and procedures applicable to the commitment or expenditure of revenues of the State;

"(8) in carrying out the requirements of section 606 of this Act, the State will use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards;

"(9) the State will require as a condition of making a loan or providing other assistance, as described in section 603(d) of this Act, from the fund that the recipient of such assistance will maintain project accounts in accordance with generally accepted government accounting standards; and

"(10) the State will make annual reports to the Administrator on the actual use of funds in accordance with section 606(d) of this Act.

"SEC. 603. WATER POLLUTION CONTROL REVOLVING LOAN FUNDS.

"(a) Requirements for Obligation of Grant Funds.—Before a State may receive a capitalization grant with funds made available under this title and section 205(m) of this Act, the State shall first establish a water pollution control revolving fund which complies with the requirements of this section.

"(b) Administration.—Each State water pollution control revolving fund shall be administered by an instrumentality of the State with such powers and limitations as may be required to operate such fund in accordance with the requirements and objectives of this Act.

"(c) Projects Eligible for Assistance.—The amounts of funds available to each State water pollution control revolving fund shall be used only for providing financial assistance (1) to any municipality, intermunicipal, interstate, or State agency for construction of publicly owned treatment works (as defined in section 212 of this Act), (2) for the implementation of a management program established under section 319 of this Act, and (3) for development and

implementation of a conservation and management plan under section 320 of this Act. The fund shall be established, maintained, and credited with repayments, and the fund balance shall be available in perpetuity for providing such financial assistance.

"(d) Types of Assistance.—Except as otherwise limited by State law, a water pollution control revolving fund of a State under this section may be used only—

"(1) to make loans, on the condition that—

"(A) such loans are made at or below market interest rates, including interest free loans, at terms not to exceed 20 years;

"(B) annual principal and interest payments will commence not later than 1 year after completion of any project and all loans will be fully amortized not later than 20 years after project completion;

"(C) the recipient of a loan will establish a dedicated source of revenue for repayment of loans; and

"(D) the fund will be credited with all payments of principal and interest on all loans;

"(2) to buy or refinance the debt obligation of municipalities and intermunicipal and interstate agencies within the State at or below market rates, where such debt obligations were incurred after March 7, 1985;

"(3) to guarantee, or purchase insurance for, local obligations where such action would improve credit market access or reduce interest rates;

"(4) as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State if the proceeds of the sale of such bonds will be deposited in the fund;

"(5) to provide loan guarantees for similar revolving funds established by municipalities or intermunicipal agencies;

"(6) to earn interest on fund accounts; and

"(7) for the reasonable costs of administering the fund and conducting activities under this title, except that such amounts shall not exceed 4 percent of all grant awards to such fund under this title.

"(e) Limitation To Prevent Double Benefits.—If a State makes, from its water pollution revolving fund, a loan which will finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works, the State shall ensure that if the recipient of such loan receives a grant under section 201(g) of this Act for construction of such treatment works and an allowance under section 201(l)(1) of this Act for non-Federal funds expended for such planning and preparation, such recipient will promptly repay such loan to the extent of such allowance.

"(f) Consistency With Planning Requirements.—A State may provide financial assistance from its water pollution control revolving fund only with respect to a project which is consistent with plans, if any, developed under sections 205(j), 208, 303(e), 319, and 320 of this Act.

"(g) Priority List Requirement.—The State may provide financial assistance from its water pollution control revolving fund only

with respect to a project for construction of a treatment works described in subsection (c)(1) if such project is on the State's priority list under section 216 of this Act. Such assistance may be provided regardless of the rank of such project on such list.

"(h) ELIGIBILITY OF NON-FEDERAL SHARE OF CONSTRUCTION GRANT PROJECTS.—A State water pollution control revolving fund may provide assistance (other than under subsection (d)(1) of this section) to a municipality or intermunicipal or interstate agency with respect to the non-Federal share of the costs of a treatment works project for which such municipality or agency is receiving assistance from the Administrator under any other authority only if such assistance is necessary to allow such project to proceed.

"SEC. 604. ALLOTMENT OF FUNDS.

"(a) FORMULA.—Sums authorized to be appropriated to carry out this section for each of fiscal years 1989 and 1990 shall be allotted by the Administrator in accordance with section 205(c) of this Act.

"(b) RESERVATION OF FUNDS FOR PLANNING.—Each State shall reserve each fiscal year 1 percent of the sums allotted to such State under this section for such fiscal year, or $100,000, whichever amount is greater, to carry out planning under sections 205(j) and 303(e) of this Act.

"(c) ALLOTMENT PERIOD.—

"(1) PERIOD OF AVAILABILITY FOR GRANT AWARD.—Sums allotted to a State under this section for a fiscal year shall be available for obligation by the State during the fiscal year for which sums are authorized and during the following fiscal year.

"(2) REALLOTMENT OF UNOBLIGATED FUNDS.—The amount of any allotment not obligated by the State by the last day of the 2-year period of availability established by paragraph (1) shall be immediately reallotted by the Administrator on the basis of the same ratio as is applicable to sums allotted under title II of this Act for the second fiscal year of such 2-year period. None of the funds reallotted by the Administrator shall be reallotted to any State which has not obligated all sums allotted to such State in the first fiscal year of such 2-year period.

"SEC. 605. CORRECTIVE ACTION.

"(a) NOTIFICATION OF NONCOMPLIANCE.—If the Administrator determines that a State has not complied with its agreement with the Administrator under section 602 of this Act or any other requirement of this title, the Administrator shall notify the State of such noncompliance and the necessary corrective action.

"(b) WITHHOLDING OF PAYMENTS.—If a State does not take corrective action within 60 days after the date a State receives notification of such action under subsection (a), the Administrator shall withhold additional payments to the State until the Administrator is satisfied that the State has taken the necessary corrective action.

"(c) REALLOTMENT OF WITHHELD PAYMENTS.—If the Administrator is not satisfied that adequate corrective actions have been taken by the State within 12 months after the State is notified of such actions under subsection (a), the payments withheld from the State by the Administrator under subsection (b) shall be made available for reallotment in accordance with the most recent formula for allotment of funds under this title.

"SEC. 606. AUDITS, REPORTS, AND FISCAL CONTROLS; INTENDED USE PLAN.

"(a) FISCAL CONTROL AND AUDITING PROCEDURES.—Each State electing to establish a water pollution control revolving fund under this title shall establish fiscal controls and accounting procedures sufficient to assure proper accounting during appropriate accounting periods for—

"(1) payments received by the fund;

"(2) disbursements made by the fund; and

"(3) fund balances at the beginning and end of the accounting period.

"(b) ANNUAL FEDERAL AUDITS.—The Administrator shall, at least on an annual basis, conduct or require each State to have independently conducted reviews and audits as may be deemed necessary or appropriate by the Administrator to carry out the objectives of this section. Audits of the use of funds deposited in the water pollution revolving fund established by such State shall be conducted in accordance with the auditing procedures of the General Accounting Office, including chapter 75 of title 31, United States Code.

"(c) INTENDED USE PLAN.—After providing for public comment and review, each State shall annually prepare a plan identifying the intended uses of the amounts available to its water pollution control revolving fund. Such intended use plan shall include, but not be limited to—

"(1) a list of those projects for construction of publicly owned treatment works on the State's priority list developed pursuant to section 216 of this Act and a list of activities eligible for assistance under sections 319 and 320 of this Act;

"(2) a description of the short- and long-term goals and objectives of its water pollution control revolving fund;

"(3) information on the activities to be supported, including a description of project categories, discharge requirements under titles III and IV of this Act, terms of financial assistance, and communities served;

"(4) assurances and specific proposals for meeting the requirements of paragraphs (3), (4), (5), and (6) of section 602(b) of this Act; and

"(5) the criteria and method established for the distribution of funds.

"(d) ANNUAL REPORT.—Beginning the first fiscal year after the receipt of payments under this title, the State shall provide an annual report to the Administrator describing how the State has met the goals and objectives for the previous fiscal year as identified in the plan prepared for the previous fiscal year pursuant to subsection (c), including identification of loan recipients, loan amounts, and loan terms and similar details on other forms of financial assistance provided from the water pollution control revolving fund.

"(e) ANNUAL FEDERAL OVERSIGHT REVIEW.—The Administrator shall conduct an annual oversight review of each State plan prepared under subsection (c), each State report prepared under subsection (d), and other such materials as are considered necessary and appropriate in carrying out the purposes of this title. After reasonable notice by the Administrator to the State or the recipient of a loan from a water pollution control revolving fund, the State or loan recipient shall make available to the Administrator such

records as the Administrator reasonably requires to review and determine compliance with this title.

"(f) Applicability of Title II Provisions.—Except to the extent provided in this title, the provisions of title II shall not apply to grants under this title.

"SEC. 607. AUTHORIZATION OF APPROPRIATIONS.

"There is authorized to be appropriated to carry out the purposes of this title the following sums:

"(1) $1,200,000,000 per fiscal year for each of fiscal years 1989 and 1990;

"(2) $2,400,000,000 for fiscal year 1991;

"(3) $1,800,000,000 for fiscal year 1992;

"(4) $1,200,000,000 for fiscal year 1993; and

"(5) $600,000,000 for fiscal year 1994.".

(b) State-Option To Use Title II Funds.—Section 205 is amended by adding at the end thereof the following new subsection:

"(m) Discretionary Deposits Into State Water Pollution Control Revolving Funds.—

"(1) From construction grant allotments.—In addition to any amounts deposited in a water pollution control revolving fund established by a State under title VI, upon request of the Governor of such State, the Administrator shall make available to the State for deposit, as capitalization grants, in such fund in any fiscal year beginning after September 30, 1986, such amount of the amounts allotted to such State under this section for such fiscal year as the Governor considers appropriate; except that (A) in fiscal year 1987, such deposit may not exceed 50 percent of the amounts allotted to such State under this section for such fiscal year, and (B) in fiscal year 1988, such deposit may not exceed 75 percent of the amount allotted to such State under this section for this fiscal year.

"(2) Notice requirement.—The Governor of a State may make a request under paragraph (1) for a deposit into the water pollution control revolving fund of such State—

"(A) in fiscal year 1987 only if no later than 90 days after the date of the enactment of this subsection, and

"(B) in each fiscal year thereafter only if 90 days before the first day of such fiscal year,

the State provides notice of its intent to make such deposit.

"(3) Exception.—Sums reserved under section 205(j) of this Act shall not be available for obligation under this subsection.".

(c) Report to Congress.—Section 516 is amended by adding at the end thereof the following new subsection:

"(g) State Revolving Fund Report.—

"(1) In general.—Not later than February 10, 1990, the Administrator shall submit to Congress a report on the financial status and operations of water pollution control revolving funds established by the States under title VI of this Act. The Administrator shall prepare such report in cooperation with the States, including water pollution control agencies and other water pollution control planning and financing agencies.

"(2) CONTENTS.—The report under this subsection shall also include the following:

"(A) an inventory of the facilities that are in significant noncompliance with the enforceable requirements of this Act;

"(B) an estimate of the cost of construction necessary to bring such facilities into compliance with such requirements;

"(C) an assessment of the availability of sources of funds for financing such needed construction, including an estimate of the amount of funds available for providing assistance for such construction through September 30, 1999, from the water pollution control revolving funds established by the States under title VI of this Act;

"(D) an assessment of the operations, loan portfolio, and loan conditions of such revolving funds;

"(E) an assessment of the effect on user charges of the assistance provided by such revolving funds compared to the assistance provided with funds appropriated pursuant to section 207 of this Act; and

"(F) an assessment of the efficiency of the operation and maintenance of treatment works constructed with assistance provided by such revolving funds compared to the efficiency of the operation and maintenance of treatment works constructed with assistance provided under section 201 of this Act.".

SEC. 213. IMPROVEMENT PROJECTS.

(a) AVALON, CALIFORNIA.—The Administrator shall make a grant of $3,000,000 from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of California for fiscal year 1987 to the city of Avalon, California, for improvements to the publicly owned treatment works of such city.

(b) WALKER AND SMITHFIELD TOWNSHIPS, PENNSYLVANIA.—Out of funds available for grants in the State of Pennsylvania under the third sentence of section 201(g)(1) of the Federal Water Pollution Control Act in fiscal year 1987, the Administrator shall make grants—

(1) to Walker Township, Pennsylvania, for developing a collector system and connecting its wastewater treatment system into the Huntingdon Borough, Pennsylvania, sewage treatment plant, and

(2) to Smithfield Township, Pennsylvania, for rehabilitating and extending its collector system.

(c) TAYLOR MILL, KENTUCKY.—Notwithstanding section 201(g)(1) of the Federal Water Pollution Control Act or any other provision of law, the Administrator shall make a grant of $250,000 from funds allotted under section 205 of such Act to the State of Kentucky for fiscal year 1986 to the city of Taylor Mill, Kentucky, for the repair and reconstruction, as necessary, of the publicly owned treatment works of such city.

(d) NEVADA COUNTY, CALIFORNIA.—Out of funds available for grants in the State of California under the third sentence of section 201(g)(1) of the Federal Water Pollution Control Act in fiscal year

1987, the Administrator shall make a grant for the construction of a collection system serving the Glenshire/Devonshire area of Nevada County, California, to deliver waste to the Tahoe-Truckee Sanitary District's regional wastewater treatment facility.

(e) TREATMENT WORKS FOR WANAQUE, NEW JERSEY.—In fiscal year 1987 and succeeding fiscal years, the Administrator shall make grants to the Wanaque Valley Regional Sewerage Authority, New Jersey, from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of New Jersey for such fiscal year, for the construction of treatment works with a total treatment capacity of 1,050,000 gallons per day (including a treatment module with a treatment capacity of 350,000 gallons per day). Notwithstanding section 202 of such Act, the Federal share of the cost of construction of such treatment works shall be 75 percent.

(f) TREATMENT WORKS FOR LENA, ILLINOIS.—The Administrator shall make grants to the village of Lena, Illinois, from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of Illinois for fiscal years beginning after September 30, 1986, for the construction of a replacement moving bed filter press for the treatment works of such village. Notwithstanding section 202 of the Federal Water Pollution Control Act, the Federal share of the cost of construction of such project shall be 75 percent.

(g) PRIORITY FOR COURT-ORDERED AND OTHER PROJECTS.—The State of Pennsylvania, from funds allotted to it under section 205 of the Federal Water Pollution Control Act, shall give priority for construction of—

(1) the Wyoming Valley Sanitary Authority Secondary Treatment project mandated under Federal court order, regardless of the date of start of construction made pursuant to the court order; and

(2) a project for wastewater treatment for Altoona, Pennsylvania.

SEC. 214. CHICAGO TUNNEL AND RESERVOIR PROJECT.

The Chicago tunnel and reservoir project may receive grants under the last sentence of section 201(g)(1) of the Federal Water Pollution Control Act without regard to the limitation contained in such sentence if the Administrator determines that such project meets the cost-effectiveness requirements of sections 217 and 218 of such Act without any redesign or reconstruction and if the Governor of the affected State demonstrates to the satisfaction of the Administrator the water quality benefits of such project.

SEC. 215. AD VALOREM TAX DEDICATION.

For the purposes of complying with section 204(b)(1) of the Federal Water Pollution Control Act, the ad valorem tax user charge systems of the town of Hampton and the city of Nashua, New Hampshire, shall be deemed to have been dedicated as of December 27, 1977. The Administrator shall review such ad valorem tax user charge systems for compliance with the remaining requirements of such section and related regulations of the Environmental Protection Agency.

TITLE III—STANDARDS AND ENFORCEMENTS

SEC. 301. COMPLIANCE DATES.

(a) PRIORITY TOXIC POLLUTANTS.—Section 301(b)(2)(C) is amended by striking out "not later than July 1, 1984," and inserting after "of this paragraph" the following: "as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than March 31, 1989".

(b) OTHER TOXIC POLLUTANTS.—Section 301(b)(2)(D) is amended by striking out "not later than three years after the date such limitations are established" and inserting in lieu thereof "as expeditiously as practicable, but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than March 31, 1989".

(c) CONVENTIONAL POLLUTANTS.—Section 301(b)(2)(E) is amended by striking "not later than July 1, 1984," and inserting in lieu thereof "as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than March 31, 1989, compliance with".

(d) OTHER POLLUTANTS.—Section 301(b)(2)(F) is amended by striking "not" after "subparagraph (A) of this paragraph" and inserting in lieu thereof "as expeditiously as practicable but in no case", and by striking "or not later than July 1, 1984," and all that follows through the end of the sentence and inserting in lieu thereof "and in no case later than March 31, 1989.".

(e) STRICTER BPT.—Section 301(b) is amended by adding at the end the following new paragraph:

> "(3)(A) for effluent limitations under paragraph (1)(A)(i) of this subsection promulgated after January 1, 1982, and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for an industrial category issued before such date, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than March 31, 1989; and
>
> "(B) for any effluent limitation in accordance with paragraph (1)(A)(i), (2)(A)(i), or (2)(E) of this subsection established only on the basis of section 402(a)(1) in a permit issued after enactment of the Water Quality Act of 1986, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established, and in no case later than March 31, 1989.".

(f) DEADLINES FOR REGULATIONS FOR CERTAIN TOXIC POLLUTANTS.—The Administrator shall promulgate final regulations establishing effluent limitations in accordance with sections 301(b)(2)(A) and 307(b)(1) of the Federal Water Pollution Control Act for all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the

House of Representatives which are discharged from the categories of point sources in accordance with the following table:

Category	*Date by which the final regulation shall be promulgated*
Organic chemicals and plastics and synthetic fibers	*December 31, 1986.*
Pesticides	*December 31, 1986.*

SEC. 302. MODIFICATION FOR NONCONVENTIONAL POLLUTANTS.

(a) LISTING OF POLLUTANTS.—Section 301(g) is amended by redesignating paragraph (2) (and any references thereto) as paragraph (3) and by striking out all that precedes subparagraph (A) of paragraph (1) and inserting in lieu thereof the following:

"(g) MODIFICATIONS FOR CERTAIN NONCONVENTIONAL POLLUTANTS.—

"(1) GENERAL AUTHORITY.—The Administrator, with the concurrence of the State, may modify the requirements of subsection (b)(2)(A) of this section with respect to the discharge from any point source of ammonia, chlorine, color, iron, and total phenols (4AAP) (when determined by the Administrator to be a pollutant covered by subsection (b)(2)(F)) and any other pollutant which the Administrator lists under paragraph (4) of this subsection.

"(2) REQUIREMENTS FOR GRANTING MODIFICATIONS.—A modification under this subsection shall be granted only upon a showing by the owner or operator of a point source satisfactory to the Administrator that—".

(b) PROCEDURE FOR LISTING ADDITIONAL POLLUTANTS; REMOVAL.—Section 301(g) is further amended by adding at the end thereof the following new paragraphs:

"(4) PROCEDURES FOR LISTING ADDITIONAL POLLUTANTS.—

"(A) GENERAL AUTHORITY.—Upon petition of any person, the Administrator may add any pollutant to the list of pollutants for which modification under this section is authorized (except for pollutants identified pursuant to section 304(a)(4) of [illegible], toxic pollutants subject to section 307(a) of this Act, and the thermal component of discharges) in accordance with the provisions of this paragraph.

"(B) REQUIREMENTS FOR LISTING.—

"(i) SUFFICIENT INFORMATION.—The person petitioning for listing of an additional pollutant under this subsection shall submit to the Administrator sufficient information to make the determinations required by this subparagraph.

"(ii) TOXIC CRITERIA DETERMINATION.—The Administrator shall determine whether or not the pollutant meets the criteria for listing as a toxic pollutant under section 307(a) of this Act.

"(iii) LISTING AS TOXIC POLLUTANT.—If the Administrator determines that the pollutant meets the criteria for listing as a toxic pollutant under section 307(a), the Administrator shall list the pollutant as a toxic pollutant under section 307(a).

"(iv) NONCONVENTIONAL CRITERIA DETERMINATION.—If the Administrator determines that the pollutant does not meet the criteria for listing as a toxic pollutant under such section and determines that adequate test methods and sufficient data are available to make the determinations required by paragraph (2) of this subsection with respect to the pollutant, the Administrator shall add the pollutant to the list of pollutants specified in paragraph (1) of this subsection for which modifications are authorized under this subsection.

"(C) REQUIREMENTS FOR FILING OF PETITIONS.—A petition for listing of a pollutant under this paragraph—

"(i) must be filed not later than 270 days after the date of promulgation of an applicable effluent guideline under section 304;

"(ii) may be filed before promulgation of such guideline; and

"(iii) may be filed with an application for a modification under paragraph (1) with respect to the discharge of such pollutant.

"(D) DEADLINE FOR APPROVAL OF PETITION.—A decision to add a pollutant to the list of pollutants for which modifications under this subsection are authorized must be made within 270 days after the date of promulgation of an applicable effluent guideline under section 304.

"(E) BURDEN OF PROOF.—The burden of proof for making the determinations under subparagraph (B) shall be on the petitioner.

"(5) REMOVAL OF POLLUTANTS.—The Administrator may remove any pollutant from the list of pollutants for which modifications are authorized under this subsection if the Administrator determines that adequate test methods and sufficient data are no longer available for determining whether or not modifications may be granted with respect to such pollutant under paragraph (2) of this subsection.".

(c) DEADLINE FOR APPROVAL OF MODIFICATIONS.—Section 301(j) is amended—

(1) in paragraph (2) by striking out "Any" and inserting in lieu thereof "Subject to paragraph (3) of this section, any"; and

(2) by adding at the end thereof the following new paragraphs:

"(3) COMPLIANCE REQUIREMENTS UNDER SUBSECTION (g).—

"(A) EFFECT OF FILING.—An application for a modification under subsection (g) and a petition for listing of a pollutant as a pollutant for which modifications are authorized under such subsection shall not stay the requirement that the person seeking such modification or listing comply with effluent limitations under this Act for all pollutants not the subject of such application or petition.

"(B) EFFECT OF DISAPPROVAL.—Disapproval of an application for a modification under subsection (g) shall not stay the requirement that the person seeking such modification comply with all applicable effluent limitations under this Act.

"(4) DEADLINE FOR SUBSECTION (g) DECISION.—An application for a modification with respect to a pollutant filed under subsection (g) must be approved or disapproved not later than 365 days after the date of such filing; except that in any case in which a petition for listing such pollutant as a pollutant for which modifications are authorized under such subsection is approved, such application must be approved or disapproved not later than 365 days after the date of approval of such petition.".

(d) CONFORMING AMENDMENTS.—(1) Paragraph (3) of section 301(g), as redesignated by subsection (a) of this section, is amended by inserting "LIMITATION ON AUTHORITY TO APPLY FOR SUBSECTION (c) MODIFICATION.—" before "If an owner" and by aligning such paragraph with paragraph (4) of such section, as added by such subsection (c).

(2) Paragraph (2) of section 301(g) (as designated by subsection (a) of this section) is amended by realigning subparagraphs (A), (B), and (C) with subparagraph (A) of paragraph (4), as added by subsection (b) of this section.

(e) APPLICATION.—

(1) GENERAL RULE.—Except as provided in paragraph (2), the amendments made by this section shall apply to all requests for modifications under section 301(g) of the Federal Water Pollution Control Act pending on the date of the enactment of this Act and shall not have the effect of extending the deadline established in section 301(j)(1)(B) of such Act.

(2) EXCEPTION.—The amendments made by this section shall not affect any application for a modification with respect to the discharge of ammonia, chlorine, color, iron, or total phenols (4AAP) under section 301(g) of the Federal Water Pollution Control Act pending on the date of the enactment of this Act; except that the Administrator must approve or disapprove such application not later than 365 days after the date of such enactment.

SEC. 303. DISCHARGES INTO MARINE WATERS.

(a) CONSIDERATION OF OTHER SOURCES OF POLLUTANTS.—Section 301(h)(2) is amended by striking out "such modified requirements will not interfere" and inserting in lieu thereof the following: "the discharge of pollutants in accordance with such modified requirements will not interfere, alone or in combination with pollutants from other sources,".

(b) LIMITATION ON SCOPE OF MONITORING.—

(1) GENERAL RULE.—Section 301(h)(3) is amended by inserting before the semicolon at the end thereof the following: ", and the scope of such monitoring is limited to include only those scientific investigations which are necessary to study the effects of the proposed discharge".

(2) LIMITATION ON APPLICABILITY.—The amendment made by subsection (b) shall only apply to modifications and renewals of modifications which are tentatively or finally approved after the date of the enactment of this Act.

(c) URBAN AREA PRETREATMENT PROGRAM.—Section 301(h) is amended by redesignating paragraphs (6) and (7), and any references thereto, as paragraphs (7) and (8), respectively, and by inserting after paragraph (5) the following new paragraph:

"(6) in the case of any treatment works serving a population of 50,000 or more, with respect to any toxic pollutant introduced into such works by an industrial discharger for which pollutant there is no applicable pretreatment requirement in effect, sources introducing waste into such works are in compliance with all applicable pretreatment requirements, the applicant will enforce such requirements, and the applicant has in effect a pretreatment program which, in combination with the treatment of discharges from such works, removes the same amount of such pollutant as would be removed if such works were to apply secondary treatment to discharges and if such works had no pretreatment program with respect to such pollutant;".

(d) PRIMARY TREATMENT FOR EFFLUENT.—

(1) GENERAL RULE.—Section 301(h) is amended by striking out the period at the end of paragraph (8) (as redesignated by subsection (c) of this section) and inserting in lieu thereof a semicolon and by inserting after such paragraph (8) the following new paragraph:

"(9) the applicant at the time such modification becomes effective will be discharging effluent which has received at least primary or equivalent treatment and which meets the criteria established under section 304(a)(1) of this Act after initial mixing in the waters surrounding or adjacent to the point at which such effluent is discharged.".

(2) PRIMARY OR EQUIVALENT TREATMENT DEFINED.—Such section is further amended by inserting after the second sentence the following new sentence: "For the purposes of paragraph (9), 'primary or equivalent treatment' means treatment by screening, sedimentation, and skimming adequate to remove at least 30 percent of the biological oxygen demanding material and of the suspended solids in the treatment works influent, and disinfection, where appropriate.".

(e) LIMITATIONS ON ISSUANCE OF PERMITS.—Section 301(h) is further amended by adding at the end thereof the following new sentences: "In order for a permit to be issued under this subsection for the discharge of a pollutant into marine waters, such marine waters must exhibit characteristics assuring that water providing dilution does not contain significant amounts of previously discharged effluent from such treatment works. No permit issued under this subsection shall authorize the discharge of any pollutant into saline estuarine waters which at the time of application do not support a balanced indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish, fish and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed discharge. Notwithstanding any other provisions of this subsection, no permit may be issued under this subsection for discharge of a pollutant into the New York Bight Apex consisting of the ocean waters of the Atlantic Ocean westward

of 73 degrees 30 minutes west longitude and northward of 40 degrees 10 minutes north latitude.".

(f) Application for Ocean Discharge Modification.—Section 301(j)(1)(A) is amended by inserting before the semicolon at the end thereof the following: ", except that a publicly owned treatment works which prior to December 31, 1982, had a contractual arrangement to use a portion of the capacity of an ocean outfall operated by another publicly owned treatment works which has applied for or received modification under subsection (h), may apply for a modification of subsection (h) in its own right not later than 30 days after the date of the enactment of the Water Quality Act of 1986".

(g) Grandfather of Certain Applicants.—The amendments made by subsections (a), (c), (d), and (e) of this section shall not apply to an application for a permit under section 301(h) of the Federal Water Pollution Control Act which has been tentatively or finally approved by the Administrator before the date of the enactment of this Act; except that such amendments shall apply to all renewals of such permits after such date of enactment.

SEC. 304. FILING DEADLINE FOR TREATMENT WORKS MODIFICATION.

(a) Extension.—The second sentence of section 301(i)(1) is amended by striking out "of this subsection." and inserting in lieu thereof "of the Water Quality Act of 1986.".

(b) Applicability.—The amendment made by subsection (a) shall not apply to those treatment works which are subject to a compliance schedule established before the date of the enactment of this Act by a court order or a final administrative order.

SEC. 305. INNOVATIVE TECHNOLOGY COMPLIANCE DEADLINES FOR DIRECT DISCHARGERS.

(a) Extension of Deadline.—Section 301(k) is amended by striking out "July 1, 1987," and inserting in lieu thereof "two years after the date for compliance with such effluent limitation which would otherwise be applicable under such subsection,".

(b) Extension to Conventional Pollutants.—Section 301(k) is amended by inserting "or (b)(2)(E)" after "(b)(2)(A)" each place it appears.

SEC. 306. FUNDAMENTALLY DIFFERENT FACTORS.

(a) General Rule.—Section 301 is amended by adding at the end the following new subsections:

"(n) Fundamentally Different Factors.—

"(1) General rule.—The Administrator, with the concurrence of the State, may establish an alternative requirement under subsection (b)(2) or section 307(b) for a facility that modifies the requirements of national effluent limitation guidelines or categorical pretreatment standards that would otherwise be applicable to such facility, if the owner or operator of such facility demonstrates to the satisfaction of the Administrator that—

"(A) the facility is fundamentally different with respect to the factors (other than cost) specified in section 304(b) or 304(g) and considered by the Administrator in establishing such national effluent limitation guidelines or categorical pretreatment standards;

"(B) the application—

"(i) is based solely on information and supporting data submitted to the Administrator during the rulemaking for establishment of the applicable national effluent limitation guidelines or categorical pretreatment standard specifically raising the factors that are fundamentally different for such facility; or

"(ii) is based on information and supporting data referred to in clause (i) and information and supporting data the applicant did not have a reasonable opportunity to submit during such rulemaking;

"(C) the alternative requirement is no less stringent than justified by the fundamental difference; and

"(D) the alternative requirement will not result in a non-water quality environmental impact which is markedly more adverse than the impact considered by the Administrator in establishing such national effluent limitation guideline or categorical pretreatment standard.

"(2) TIME LIMIT FOR APPLICATIONS.—An application for an alternative requirement which modifies the requirements of an effluent limitation or pretreatment standard under this subsection must be submitted to the Administrator within 180 days after the date on which such limitation or standard is established or revised, as the case may be.

"(3) TIME LIMIT FOR DECISION.—The Administrator shall approve or deny by final agency action an application submitted under this subsection within 180 days after the date such application is filed with the Administrator.

"(4) SUBMISSION OF INFORMATION.—The Administrator may allow an applicant under this subsection to submit information and supporting data until the earlier of the date the application is approved or denied or the last day that the Administrator has to approve or deny such application.

"(5) TREATMENT OF PENDING APPLICATIONS.—For the purposes of this subsection, an application for an alternative requirement based on fundamentally different factors which is pending on the date of the enactment of this subsection shall be treated as having been submitted to the Administrator on the 180th day following such date of enactment. The applicant may amend the application to take into account the provisions of this subsection.

"(6) EFFECT OF SUBMISSION OF APPLICATION.—An application for an alternative requirement under this subsection shall not stay the applicant's obligation to comply with the effluent limitation guideline or categorical pretreatment standard which is the subject of the application.

"(7) EFFECT OF DENIAL.—If an application for an alternative requirement which modifies the requirements of an effluent limitation or pretreatment standard under this subsection is denied by the Administrator, the applicant must comply with such limitation or standard as established or revised, as the case may be.

"(8) REPORTS.—Every 6 months after the date of the enactment of this subsection, the Administrator shall submit to the Committee on Environment and Public Works of the Senate

and the Committee on Public Works and Transportation of the House of Representatives a report on the status of applications for alternative requirements which modify the requirements of effluent limitations under section 301 or 304 of this Act or any national categorical pretreatment standard under section 307(b) of this Act filed before, on, or after such date of enactment.

"(o) APPLICATION FEES.—The Administrator shall prescribe and collect from each applicant fees reflecting the reasonable administrative costs incurred in reviewing and processing applications for modifications submitted to the Administrator pursuant to subsections (c), (g), (i), (k), (m), and (n) of section 301, section 304(d)(4), and section 316(a) of this Act. All amounts collected by the Administrator under this subsection shall be deposited into a special fund of the Treasury entitled 'Water Permits and Related Services' which shall thereafter be available for appropriation to carry out activities of the Environmental Protection Agency for which such fees were collected.".

(b) CONFORMING AMENDMENT.—Section 301(l) is amended by striking out "The" and inserting in lieu thereof "Other than as provided in subsection (n) of this section, the".

(c) PHOSPHATE FERTILIZER EFFLUENT LIMITATION.—

(1) LIMITATION ON APPLICABILITY.—The effluent limitation established by the Administrator pursuant to section 301(b) of the Federal Water Pollution Control Act for the phosphate subcategory of the fertilizer manufacturing point source category shall not apply to facilities which had commenced construction on or before April 8, 1974, and for which the Administrator is proposing to revise the applicability of such limitations to exclude such facilities.

(2) ISSUANCE OF PERMIT.—As soon as possible after the date of the enactment of this Act, but not later than 180 days after such date of enactment, the Administrator shall issue permits under section 402(a)(1)(B) of the Federal Water Pollution Control Act with respect to the facilities described in paragraph (1). Such permits shall remain in effect until, after such date of enactment, issuance of a permit under effluent guidelines applicable to discharges for the phosphate subcategory.

SEC. 307. COAL REMINING OPERATIONS.

Section 301 is amended by adding at the end thereof the following:

"(p) MODIFIED PERMIT FOR COAL REMINING OPERATIONS.—

"(1) IN GENERAL.—Subject to paragraphs (2) through (4) of this subsection, the Administrator, or the State in any case which the State has an approved permit program under section 402(b), may issue a permit under section 402 which modifies the requirements of subsection (b)(2)(A) of this section with respect to the pH level of any pre-existing discharge, and with respect to pre-existing discharges of iron and manganese from the remined area of any coal remining operation or with respect to the pH level or level of iron or manganese in any pre-existing discharge affected by the remining operation. Such modified requirements shall apply the best available technology economically achievable on a case-by-case basis, using best professional

judgment, to set specific numerical effluent limitations in each permit.

"(2) LIMITATIONS.—The Administrator or the State may only issue a permit pursuant to paragraph (1) if the applicant demonstrates to the satisfaction of the Administrator or the State, as the case may be, that the coal remining operation will result in the potential for improved water quality from the remining operation but in no event shall such a permit allow the pH level of any discharge, and in no event shall such a permit allow the discharges of iron and manganese, to exceed the levels being discharged from the remined area before the coal remining operation begins. No discharge from, or affected by, the remining operation shall exceed State water quality standards established under section 303 of this Act.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) COAL REMINING OPERATION.—The term 'coal remining operation' means a coal mining operation which begins after the date of the enactment of this subsection at a site on which coal mining was conducted before the effective date of the Surface Mining Control and Reclamation Act of 1977.

"(B) REMINED AREA.—The term 'remined area' means only that area of any coal remining operation on which coal mining was conducted before the effective date of the Surface Mining Control and Reclamation Act of 1977.

"(C) PRE-EXISTING DISCHARGE.—The term 'pre-existing discharge' means any discharge at the time of permit application under this subsection.

"(4) APPLICABILITY OF STRIP MINING LAWS.—Nothing in this subsection shall affect the application of the Surface Mining Control and Reclamation Act of 1977 to any coal remining operation, including the application of such Act to suspended solids.".

SEC. 308. INDIVIDUAL CONTROL STRATEGIES FOR TOXIC POLLUTANTS.

(a) IN GENERAL.—Section 304 is amended by adding at the end thereof the following new subsection:

"(l) INDIVIDUAL CONTROL STRATEGIES FOR TOXIC POLLUTANTS.—

"(1) STATE LIST OF NAVIGABLE WATERS AND DEVELOPMENT OF STRATEGIES.—Not later than 2 years after the date of the enactment of this subsection, each State shall submit to the Administrator for review, approval, and implementation under this subsection—

"(A) a list of those waters within the State which after the application of effluent limitations required under section 301(b)(2) of this Act cannot reasonably be anticipated to attain or maintain (i) water quality standards for such waters reviewed, revised, or adopted in accordance with section 303(c)(2)(B) of this Act, due to toxic pollutants, or (ii) that water quality which shall assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water;

"(B) a list of all navigable waters in such State for which the State does not expect the applicable standard under section 303 of this Act will be achieved after the requirements of sections 301(b), 306, and 307(b) are met, due entirely or substantially to discharges from point sources of any toxic pollutants listed pursuant to section 307(a);

"(C) for each segment of the navigable waters included on such lists, a determination of the specific point sources discharging any such toxic pollutant which is believed to be preventing or impairing such water quality and the amount of each such toxic pollutant discharged by each such source; and

"(D) for each such segment, an individual control strategy which the State determines will produce a reduction in the discharge of toxic pollutants from point sources identified by the State under this paragraph through the establishment of effluent limitations under section 402 of this Act and water quality standards under section 303(c)(2)(B) of this Act, which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than 3 years after the date of the establishment of such strategy.

"(2) APPROVAL OR DISAPPROVAL.—Not later than 120 days after the last day of the 2-year period referred to in paragraph (1), the Administrator shall approve or disapprove the control strategies submitted under paragraph (1) by any State.

"(3) ADMINISTRATOR'S ACTION.—If a State fails to submit control strategies in accordance with paragraph (1) or the Administrator does not approve the control strategies submitted by such State in accordance with paragraph (1), then, not later than 1 year after the last day of the period referred to in paragraph (2), the Administrator, in cooperation with such State and after notice and opportunity for public comment, shall implement the requirements of paragraph (1) in such State. In the implementation of such requirements, the Administrator shall, at a minimum, consider for listing under this subsection any navigable waters for which any person submits a petition to the Administrator for listing not later than 120 days after such last day."

(b) JUDICIAL REVIEW.—Section 509(b)(1) is amended—

(1) by striking out "and (F)" and inserting in lieu thereof "(F)"; and

(2) by inserting after "any permit under section 402," the following: "and (G) in promulgating any individual control strategy under section 304(l),".

(c) GUIDANCE TO STATES; INFORMATION ON WATER QUALITY CRITERIA FOR TOXICS.—Section 304(a) is amended by adding at the end the following new paragraphs:

"(7) GUIDANCE TO STATES.—The Administrator, after consultation with appropriate State agencies and on the basis of criteria and information published under paragraphs (1) and (2) of this subsection, shall develop and publish, within 9 months after the date of the enactment of the Water Quality Act of

1986, guidance to the States on performing the identification required by section 304(l)(1) of this Act.

"(8) Information on water quality criteria.—The Administrator, after consultation with appropriate State agencies and within 2 years after the date of the enactment of the Water Quality Act of 1986, shall develop and publish information on methods for establishing and measuring water quality criteria for toxic pollutants on other bases than pollutant-by-pollutant criteria, including biological monitoring and assessment methods.".

(d) Water Quality Criteria for Toxic Pollutants.—Section 303(c)(2) is amended by inserting "(A)" after "(2)" and by adding the following new subparagraph:

"(B) Whenever a State reviews water quality standards pursuant to paragraph (1) of this subsection, or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria for all toxic pollutants listed pursuant to section 307(a)(1) of this Act for which criteria have been published under section 304(a), the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses. Such criteria shall be specific numerical criteria for such toxic pollutants. Where such numerical criteria are not available, whenever a State reviews water quality standards pursuant to paragraph (1), or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria based on biological monitoring or assessment methods consistent with information published pursuant to section 304(a)(8). Nothing in this section shall be construed to limit or delay the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods or previously adopted numerical criteria.".

(e) Modifications of Effluent Limitations.—

(1) In general.—Section 302(b) is amended to read as follows:

"(b) Modifications of Effluent Limitations.—

"(1) Notice and hearing.—Prior to establishment of any effluent limitation pursuant to subsection (a) of this section, the Administrator shall publish such proposed limitation and within 90 days of such publication hold a public hearing.

"(2) Permits.—

"(A) No reasonable relationship.—The Administrator, with the concurrence of the State, may issue a permit which modifies the effluent limitations required by subsection (a) of this section for pollutants other than toxic pollutants if the applicant demonstrates at such hearing that (whether or not technology or other alternative control strategies are available) there is no reasonable relationship between the economic and social costs and the benefits to be obtained (including attainment of the objective of this Act) from achieving such limitation.

"(B) Reasonable progress.—The Administrator, with the concurrence of the State, may issue a permit which modifies the effluent limitations required by subsection (a) of this section for toxic pollutants for a single period not to

exceed 5 years if the applicant demonstrates to the satisfaction of the Administrator that such modified requirements (i) will represent the maximum degree of control within the economic capability of the owner and operator of the source, and (ii) will result in reasonable further progress beyond the requirements of section 301(b)(2) toward the requirements of subsection (a) of this section.".

(2) CONFORMING AMENDMENTS.—Section 302(a) is amended—

(A) by inserting "or as identified under section 304(l)" after "in the judgment of the Administrator"; and

(B) by inserting "public health," after "protection of".

(f) SCHEDULE FOR REVIEW OF GUIDELINES.—Section 304 is amended by adding at the end the following new subsection:

"(m) SCHEDULE FOR REVIEW OF GUIDELINES.—

"(1) PUBLICATION.—Within 12 months after the date of the enactment of the Water Quality Act of 1986, and biennially thereafter, the Administrator shall publish in the Federal Register a plan which shall—

"(A) establish a schedule for the annual review and revision of promulgated effluent guidelines, in accordance with subsection (b) of this section;

"(B) identify categories of sources discharging toxic or nonconventional pollutants for which guidelines under subsection (b)(2) of this section and section 306 have not previously been published; and

"(C) establish a schedule for promulgation of effluent guidelines for categories identified in subparagraph (B), under which promulgation of such guidelines shall be no later than 4 years after such date of enactment for categories identified in the first published plan or 3 years after the publication of the plan for categories identified in later published plans.

"(2) PUBLIC REVIEW.—The Administrator shall provide for public review and comment on the plan prior to final publication.".

(g) WATER QUALITY IMPROVEMENT STUDY.—

(1) STUDY.—The Administrator shall study the water quality improvements which have been achieved by application of best available technology economically achievable pursuant to section 301(b)(2) of the Federal Water Pollution Control Act. Such study shall include, but not be limited to, an analysis of the effectiveness of the application of best available technology economically achievable pursuant to such section in attaining applicable water quality standards (including the standard specified in section 302(a) of such Act) and an analysis of the effectiveness of the water quality program under such Act and methods of improving such program, including site specific levels of treatment which will achieve the water quality goals of such Act.

(2) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Administrator shall submit a report on the results of the study conducted under subsection (a) together with recommendations for improving the water quality program and its effectiveness to the Committee on Public Works and

Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

SEC. 309. PRETREATMENT STANDARDS.

(a) EXTENSION OF COMPLIANCE DATE BY POTW.—Section 307 is amended by adding at the end the following:

"(e) COMPLIANCE DATE EXTENSION FOR INNOVATIVE PRETREATMENT SYSTEMS.—In the case of any existing facility that proposes to comply with the pretreatment standards of subsection (b) of this section by applying an innovative system that meets the requirements of section 301(k) of this Act, the owner or operator of the publicly owned treatment works receiving the treated effluent from such facility may extend the date for compliance with the applicable pretreatment standard established under this section for a period not to exceed 2 years—

"(1) if the Administrator determines that the innovative system has the potential for industrywide application, and

"(2) if the Administrator (or the State in consultation with the Administrator, in any case in which the State has a pretreatment program approved by the Administrator)—

"(A) determines that the proposed extension will not cause the publicly owned treatment works to be in violation of its permit under section 402 or of section 405 or to contribute to such a violation, and

"(B) concurs with the proposed extension.".

(b) INCREASE IN EPA EMPLOYEES.—The Administrator shall take such actions as may be necessary to increase the number of employees of the Environmental Protection Agency in order to effectively implement pretreatment requirements under section 307 of the Federal Water Pollution Control Act.

SEC. 310. INSPECTION AND ENTRY.

(a) UNAUTHORIZED DISCLOSURE.—

(1) IN GENERAL.—Section 308(b) is amended by striking out all that follows "Code" and inserting in lieu thereof a period and the following: "Any authorized representative of the Administrator (including an authorized contractor acting as a representative of the Administrator) who knowingly or willfully publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information which is required to be considered confidential under this subsection shall be fined not more than $1,000 or imprisoned not more than 1 year, or both. Nothing in this subsection shall prohibit the Administrator or an authorized representative of the Administrator (including any authorized contractor acting as a representative of the Administrator) from disclosing records, reports, or information to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act.".

(2) CONFORMING AMENDMENT.—Section 308(a)(B) is amended by inserting "(including an authorized contractor acting as a representative of the Administrator)" after "or his authorized representative".

(b) ACCESS BY CONGRESS.—Section 308 is amended by adding at the end the following new subsection:

"(d) Access by Congress.—Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the Administrator (or any representative of the Administrator) under this Act shall be made available, upon written request of any duly authorized committee of Congress, to such committee.".

SEC. 311. MARINE SANITATION DEVICES.

(a) State Regulation of Houseboats.—Section 312(f)(1) is amended by striking out "After" and inserting in lieu thereof "(A) Except as provided in subparagraph (B), after" and by adding at the end thereof the following:

"(B) A State may adopt and enforce a statute or regulation with respect to the design, manufacture, or installation or use of any marine sanitation device on a houseboat, if such statute or regulation is more stringent than the standards and regulations promulgated under this section. For purposes of this paragraph, the term 'houseboat' means a vessel which, for a period of time determined by the State in which the vessel is located, is used primarily as a residence and is not used primarily as a means of transportation.".

(b) State Enforcement.—Section 312(k) is amended by adding at the end the following: "The provisions of this section may also be enforced by a State.".

SEC. 312. CRIMINAL PENALTIES.

Section 309(c) is amended to read as follows:

"(c) Criminal Penalties.—

"(1) Negligent violations.—Any person who—

"(A) negligently violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State; or

"(B) negligently introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable Federal, State, or local requirements or permits, which causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State;

shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment of not more than 2 years, or by both.

"(2) Knowing violations.—Any person who—

"(A) knowingly violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State; or

"(B) knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable Federal, State, or local requirements or permits, which causes such treatment works to violate any effluent limitation or condition in a permit issued to the treatment works under section 402 of this Act by the Administrator or a State;

shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $100,000 per day of violation, or by imprisonment of not more than 6 years, or by both.

"(3) KNOWING ENDANGERMENT.—

"(A) GENERAL RULE.—Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. A person which is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than $1,000,000. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both fine and imprisonment.

"(B) ADDITIONAL PROVISIONS.—For the purpose of subparagraph (A) of this paragraph—

"(i) in determining whether a defendant who is an individual knew that his conduct placed another person in imminent danger of death or serious bodily injury—

"(I) the person is responsible only for actual awareness or actual belief that he possessed; and

"(II) knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant;

except that in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information;

"(ii) it is an affirmative defense to prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

"(I) an occupation, a business, or a profession; or

"(II) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent;

and such defense may be established under this subparagraph by a preponderance of the evidence;

"(iii) the term 'organization' means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons; and

"(iv) the term 'serious bodily injury' means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

"(4) False statements.—Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both.

"(5) Treatment of single operational upset.—For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

"(6) Responsible corporate officer as 'person'.—For the purpose of this subsection, the term 'person' means, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.

"(7) Hazardous substance defined.—For the purpose of this subsection, the term 'hazardous substance' means (A) any substance designated pursuant to section 311(b)(2)(A) of this Act, (B) any element, compound, mixture, solution, or substance des-

ignated pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of this Act, and (E) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.".

SEC. 313. CIVIL PENALTIES.

(a) VIOLATIONS OF PRETREATMENT REQUIREMENTS.—

(1) GENERAL RULE.—Section 309(d) is amended by inserting ", or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of this Act," after "section 404 of this Act by a State,".

(2) SAVINGS PROVISION.—No State shall be required before July 1, 1988, to modify a permit program approved or submitted under section 402 of the Federal Water Pollution Control Act as a result of the amendment made by paragraph (1).

(b) INCREASED PENALTY.—

(1) GENERAL RULE.—Section 309(d) is amended by striking out "$10,000 per day of such violation" and inserting in lieu thereof "$25,000 per day for each violation".

(2) INCREASED PENALTIES NOT REQUIRED UNDER STATE PROGRAMS.—The Federal Water Pollution Control Act shall not be construed as requiring a State to have a civil penalty for violations described in 309(d) of such Act which has the same monetary amount as the civil penalty established by such section, as amended by paragraph (1). Nothing in this paragraph shall affect the Administrator's authority to establish or adjust by regulation a minimum acceptable State civil penalty.

(c) FACTORS TO CONSIDER IN DETERMINING PENALTY AMOUNT.—Section 309(d) is amended by adding at the end thereof the following: "In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.".

(d) VIOLATIONS OF SECTION 404 PERMITS.—Section 404(s) is amended—

(1) by striking out paragraph (4);

(2) by redesignating paragraph (5) as paragraph (4); and

(3) in paragraph (4), as so redesignated—

(A) by striking out "$10,000 per day of such violation" and inserting in lieu thereof "$25,000 per day for each violation";

(B) by adding at the end thereof the following: "In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require.".

SEC. 314. ADMINISTRATIVE PENALTIES.

(a) General Rule.—Section 309 is amended by adding at the end thereof the following:

"(g) Administrative Penalties.—

"(1) Violations.—Whenever on the basis of any information available—

"(A) the Administrator finds that any person has violated section 301, 302, 306, 307, 308, 318, or 405 of this Act, or has violated any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or in a permit issued under section 404 by a State, or

"(B) the Secretary of the Army (hereinafter in this subsection referred to as the 'Secretary') finds that any person has violated any permit condition or limitation in a permit issued under section 404 of this Act by the Secretary,

the Administrator or Secretary, as the case may be, may, after consultation with the State in which the violation occurs, assess a class I civil penalty or a class II civil penalty under this subsection.

"(2) Classes of penalties.—

"(A) Class I.—The amount of a class I civil penalty under paragraph (1) may not exceed $10,000 per violation, except that the maximum amount of any class I civil penalty under this subparagraph shall not exceed $25,000. Before issuing an order assessing a civil penalty under this subparagraph, the Administrator or the Secretary, as the case may be, shall give to the person to be assessed such penalty written notice of the Administrator's or Secretary's proposal to issue such order and the opportunity to request, within 30 days of the date the notice is received by such person, a hearing on the proposed order. Such hearing shall not be subject to section 554 or 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.

"(B) Class II.—The amount of a class II civil penalty under paragraph (1) may not exceed $10,000 per day for each day during which the violation continues; except that the maximum amount of any class II civil penalty under this subparagraph shall not exceed $125,000. Except as otherwise provided in this subsection, a class II civil penalty shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected after notice and opportunity for a hearing on the record in accordance with section 554 of

title 5, United States Code. The Administrator and the Secretary may issue rules for discovery procedures for hearings under this subparagraph.

"(3) DETERMINING AMOUNT.—In determining the amount of any penalty assessed under this subsection, the Administrator or the Secretary, as the case may be, shall take into account the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

"(4) RIGHTS OF INTERESTED PERSONS.—

"(A) PUBLIC NOTICE.—Before issuing an order assessing a civil penalty under this subsection the Administrator or Secretary, as the case may be, shall provide public notice of and reasonable opportunity to comment on the proposed issuance of such order.

"(B) PRESENTATION OF EVIDENCE.—Any person who comments on a proposed assessment of a penalty under this subsection shall be given notice of any hearing held under this subsection and of the order assessing such penalty. In any hearing held under this subsection, such person shall have a reasonable opportunity to be heard and to present evidence.

"(C) RIGHTS OF INTERESTED PERSONS TO A HEARING.—If no hearing is held under paragraph (2) before issuance of an order assessing a penalty under this subsection, any person who commented on the proposed assessment may petition, within 30 days after the issuance of such order, the Administrator or Secretary, as the case may be, to set aside such order and to provide a hearing on the penalty. If the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order, the Administrator or Secretary shall immediately set aside such order and provide a hearing in accordance with paragraph (2)(A) in the case of a class I civil penalty and paragraph (2)(B) in the case of a class II civil penalty. If the Administrator or Secretary denies a hearing under this subparagraph, the Administrator or Secretary shall provide to the petitioner, and publish in the Federal Register, notice of and the reasons for such denial.

"(5) FINALITY OF ORDER.—An order issued under this subsection shall become final 30 days after its issuance unless a petition for judicial review is filed under paragraph (8) or a hearing is requested under paragraph (4)(C). If such a hearing is denied, such order shall become final 30 days after such denial.

"(6) EFFECT OF ORDER.—

"(A) LIMITATION ON ACTIONS UNDER OTHER SECTIONS.—Action taken by the Administrator or the Secretary, as the case may be, under this subsection shall not affect or limit

the Administrator's or Secretary's authority to enforce any provision of this Act; except that any violation—

"(i) with respect to which the Administrator or the Secretary has commenced and is diligently prosecuting an action under this subsection,

"(ii) with respect to which a State has commenced and is diligently prosecuting an action under a State law comparable to this subsection, or

"(iii) for which the Administrator, the Secretary, or the State has issued a final order not subject to further judicial review and the violator has paid a penalty assessed under this subsection, or such comparable State law, as the case may be,

shall not be the subject of a civil penalty action under subsection (d) of this section or section 311(b) or section 505 of this Act.

"(B) APPLICABILITY OF LIMITATION WITH RESPECT TO CITIZEN SUITS.—The limitations contained in subparagraph (A) on civil penalty actions under section 505 of this Act shall not apply with respect to any violation for which—

"(i) a civil action under section 505(a)(1) of this Act has been filed prior to commencement of an action under this subsection, or

"(ii) notice of an alleged violation of section 505(a)(1) of this Act has been given in accordance with section 505(b)(1)(A) prior to commencement of an action under this subsection and an action under section 505(a)(1) with respect to such alleged violation is filed before the 120th day after the date on which such notice is given.

"(7) EFFECT OF ACTION ON COMPLIANCE.—No action by the Administrator or the Secretary under this subsection shall affect any person's obligation to comply with any section of this Act or with the terms and conditions of any permit issued pursuant to section 402 or 404 of this Act.

"(8) JUDICIAL REVIEW.—Any person against whom a civil penalty is assessed under this subsection or who commented on the proposed assessment of such penalty in accordance with paragraph (4) may obtain review of such assessment—

"(A) in the case of assessment of a class I civil penalty, in the United States district court for the District of Columbia or in the district in which the violation is alleged to have occurred, or

"(B) in the case of assessment of a class II civil penalty, in United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business,

by filing a notice of appeal in such court within the 30-day period beginning on the date the civil penalty order is issued and by simultaneously sending a copy of such notice by certified mail to the Administrator or the Secretary, as the case may be, and the Attorney General. The Administrator or the Secretary shall promptly file in such court a certified copy of the record on which the order was issued. Such court shall not set aside or remand such order unless there is not substantial evidence in *the record, taken as a whole, to support the finding of a violation or unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion and shall not impose additional civil penalties for the same violation unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion.*

"(9) Collection.—If any person fails to pay an assessment of a civil penalty—

"(A) after the order making the assessment has become final, or

"(B) after a court in an action brought under paragraph (8) has entered a final judgment in favor of the Administrator or the Secretary, as the case may be,

the Administrator or the Secretary shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus interest at currently prevailing rates from the date of the final order or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in the first sentence of this paragraph shall be required to pay, in addition to such amount and interest, attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

"(10) Subpoenas.—The Administrator or Secretary, as the case may be, may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this subsection. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

"(11) Protection of existing procedures.—Nothing in this subsection shall change the procedures existing on the day before the date of the enactment of the Water Quality Act of 1986 under other subsections of this section for issuance and enforcement of orders by the Administrator.".

(b) Reports on Enforcement Mechanisms.—The Secretary of the Army and the Administrator shall each prepare and submit a report to the Congress, not later than December 1, 1988, which shall examine and analyze various enforcement mechanisms for use by the Secretary or Administrator, as the case may be, including an administrative civil penalty mechanism. Each of such reports shall

also include an examination, prepared in consultation with the Comptroller General, of the efficacy of the Secretary's or the Administrator's existing enforcement authorities and shall include recommendations for improvements in their operation.

(c) CONFORMING AMENDMENT.—Section 505(a) is amended by inserting "and section 309(g)(6)" after "Except as provided in subsection (b) of this section".

SEC. 315. CLEAN LAKES.

(a) ESTABLISHMENT AND SCOPE OF PROGRAM.—Section 314(a) is amended to read as follows:

"(a) ESTABLISHMENT AND SCOPE OF PROGRAM.—

"(1) STATE PROGRAM REQUIREMENTS.—Each State on a biennial basis shall prepare and submit to the Administrator for his approval—

"(A) an identification and classification according to eutrophic condition of all publicly owned lakes in such State;

"(B) a description of procedures, processes, and methods (including land use requirements), to control sources of pollution of such lakes;

"(C) a description of methods and procedures, in conjunction with appropriate Federal agencies, to restore the quality of such lakes;

"(D) methods and procedures to mitigate the harmful effects of high acidity, including innovative methods of neutralizing and restoring buffering capacity of lakes and methods of removing from lakes toxic metals and other toxic substances mobilized by high acidity;

"(E) a list and description of those publicly owned lakes in such State for which uses are known to be impaired, including those lakes which are known not to meet applicable water quality standards or which require implementation of control programs to maintain compliance with applicable standards and those lakes in which water quality has deteriorated as a result of high acidity that may reasonably be due to acid deposition; and

"(F) an assessment of the status and trends of water quality in lakes in such State, including but not limited to, the nature and extent of pollution loading from point and nonpoint sources and the extent to which the use of lakes is impaired as a result of such pollution, particularly with respect to toxic pollution.

"(2) SUBMISSION AS PART OF 305(b)(1) REPORT.—The information required under paragraph (1) shall be included in the report required under section 305(b)(1) of this Act, beginning with the report required under such section by April 1, 1988.

"(3) REPORT OF ADMINISTRATOR.—Not later than 180 days after receipt from the States of the biennial information required under paragraph (1), the Administrator shall submit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the status of water quality in lakes in the United States, including the effectiveness of the methods and procedures described in paragraph (1)(D).

"(4) ELIGIBILITY REQUIREMENT.—Beginning after April 1, 1988, a State must have submitted the information required under paragraph (1) in order to receive grant assistance under this section.".

(b) DEMONSTRATION PROGRAM.—Section 314 is amended by adding at the end thereof the following new subsections:

"(d) DEMONSTRATION PROGRAM.—

"(1) GENERAL REQUIREMENTS.—The Administrator is authorized and directed to establish and conduct at locations throughout the Nation a lake water quality demonstration program. The program shall, at a minimum—

"(A) develop cost effective technologies for the control of pollutants to preserve or enhance lake water quality while optimizing multiple lakes uses;

"(B) control nonpoint sources of pollution which are contributing to the degradation of water quality in lakes;

"(C) evaluate the feasibility of implementing regional consolidated pollution control strategies;

"(D) demonstrate environmentally preferred techniques for the removal and disposal of contaminated lake sediments;

"(E) develop improved methods for the removal of silt, stumps, aquatic growth, and other obstructions which impair the quality of lakes;

"(F) construct and evaluate slit traps and other devices or equipment to prevent or abate the deposit of sediment in lakes; and

"(G) demonstrate the costs and benefits of utilizing dredged material from lakes in the reclamation of despoiled land.

"(2) GEOGRAPHICAL REQUIREMENTS.—Demonstration projects authorized by this subsection shall be undertaken to reflect a variety of geographical and environmental conditions. As a priority, the Administrator shall undertake demonstration projects at Lake Houston, Texas; Beaver Lake, Arkansas; Greenwood Lake and Belcher Creek, New Jersey; Deal Lake, New Jersey; Alcyon Lake, New Jersey; Gorton's Pond, Rhode Island; Lake Washington, Rhode Island; Lake Bomoseen, Vermont; Sauk Lake, Minnesota; and Lake Worth, Texas.

"(3) REPORTS.—The Administrator shall report annually to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate on work undertaken pursuant to this subsection. Upon completion of the program authorized by this subsection, the Administrator shall submit to such Committees a final report on the results of such program, along with recommendations for further measures to improve the water quality of the Nation's lakes.

"(4) AUTHORIZATION OF APPROPRIATIONS.—

"(A) IN GENERAL.—There is authorized to be appropriated to carry out this subsection not to exceed $40,000,000 for fiscal years beginning after September 30, 1986, to remain available until expended.

"(B) SPECIAL AUTHORIZATIONS.—

"(i) AMOUNT.—There is authorized to be appropriated to carry out subsection (b) with respect to subsection (a)(1)(D) not to exceed $15,000,000 for fiscal years beginning after September 30, 1986, to remain available until expended.

"(ii) DISTRIBUTION OF FUNDS.—The Administrator shall provide for an equitable distribution of sums appropriated pursuant to this subparagraph among States carrying out approved methods and procedures. Such distribution shall be based on the relative needs of each such State for the mitigation of the harmful effects on lakes and other surface waters of high acidity that may reasonably be due to acid deposition or acid mine drainage.

"(iii) GRANTS AS ADDITIONAL ASSISTANCE.—The amount of any grant to a State under this subparagraph shall be in addition to, and not in lieu of, any other Federal financial assistance.".

(c) LAKE RESTORATION GUIDANCE MANUAL.—Section 304(j) is amended to read as follows:

"(j) LAKE RESTORATION GUIDANCE MANUAL.—The Administrator shall, within 1 year after the date of the enactment of the Water Quality Act of 1986 and biennially thereafter, publish and disseminate a lake restoration guidance manual describing methods, procedures, and processes to guide State and local efforts to improve, restore, and enhance water quality in the Nation's publicly owned lakes.".

(d) CONFORMING AMENDMENTS.—Section 314 is further amended—

(1) in subsection (b) by striking out "this section" the first place it appears and inserting in lieu thereof "subsection (a) of this section";

(2) in subsection (c)(1) by striking out "this section" the first place it appears and inserting in lieu thereof "subsection (b) of this section" and by striking out "this section" the second place it appears and inserting in lieu thereof "subsection (a) of this section"; and

(3) in subsection (c)(2), by striking out "this section" the first place it appears and inserting in lieu thereof "subsection (b) of this section" and by striking out "this section" the second place it appears and inserting in lieu thereof "subsection (a) of this section".

SEC. 316. MANAGEMENT OF NONPOINT SOURCES OF POLLUTION.

(a) IN GENERAL.—Title III is amended by adding at the end the following new section:

"SEC. 319. NONPOINT SOURCE MANAGEMENT PROGRAMS.

"(a) STATE ASSESSMENT REPORTS.—

"(1) CONTENTS.—The Governor of each State shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval, a report which—

"(A) identifies those navigable waters within the State which, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain

or maintain applicable water quality standards or the goals and requirements of this Act;

"(B) identifies those categories and subcategories of nonpoint sources or, where appropriate, particular nonpoint sources which add significant pollution to each portion of the navigable waters identified under subparagraph (A) in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;

"(C) describes the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control each category and subcategory of nonpoint sources and, where appropriate, particular nonpoint sources identified under subparagraph (B) and to reduce, to the maximum extent practicable, the level of pollution resulting from such category, subcategory, or source; and

"(D) identifies and describes State and local programs for controlling pollution added from nonpoint sources to, and improving the quality of, each such portion of the navigable waters, including but not limited to those programs which are receiving Federal assistance under subsections (h) and (i).

"(2) INFORMATION USED IN PREPARATION.—In developing the report required by this section, the State (A) may rely upon information developed pursuant to sections 208, 303(e), 304(f), 305(b), and 314, and other information as appropriate, and (B) may utilize appropriate elements of the waste treatment management plans developed pursuant to sections 208(b) and 303, to the extent such elements are consistent with and fulfill the requirements of this section.

"(b) STATE MANAGEMENT PROGRAMS.—

"(1) IN GENERAL.—The Governor of each State, for that State or in combination with adjacent States, shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval a management program which such State proposes to implement in the first four fiscal years beginning after the date of submission of such management program for controlling pollution added from nonpoint sources to the navigable waters within the State and improving the quality of such waters.

"(2) SPECIFIC CONTENTS.—Each management program proposed for implementation under this subsection shall include each of the following:

"(A) An identification of the best management practices and measures which will be undertaken to reduce pollutant loadings resulting from each category, subcategory, or particular nonpoint source designated under paragraph (1)(B), taking into account the impact of the practice on ground water quality.

"(B) An identification of programs (including, as appropriate, nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) to achieve implementation of the best management prac-

tices by the categories, subcategories, and particular nonpoint sources designated under subparagraph (A).

"(C) A schedule containing annual milestones for (i) utilization of the program implementation methods identified in subparagraph (B), and (ii) implementation of the best management practices identified in subparagraph (A) by the categories, subcategories, or particular nonpoint sources designated under paragraph (1)(B). Such schedule shall provide for utilization of the best management practices at the earliest practicable date.

"(D) A certification of the attorney general of the State or States (or the chief attorney of any State water pollution control agency which has independent legal counsel) that the laws of the State or States, as the case may be, provide adequate authority to implement such management program or, if there is not such adequate authority, a list of such additional authorities as will be necessary to implement such management program. A schedule and commitment by the State or States to seek such additional authorities as expeditiously as practicable.

"(E) Sources of Federal and other assistance and funding (other than assistance provided under subsections (h) and (i)) which will be available in each of such fiscal years for supporting implementation of such practices and measures and the purposes for which such assistance will be used in each of such fiscal years.

"(F) An identification of Federal financial assistance programs and Federal development projects for which the State will review individual assistance applications or development projects for their effect on water quality pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983, to determine whether such assistance applications or development projects would be consistent with the program prepared under this subsection; for the purposes of this subparagraph, identification shall not be limited to the assistance programs or development projects subject to Executive Order 12372 but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the State's nonpoint source pollution management program.

"(3) UTILIZATION OF LOCAL AND PRIVATE EXPERTS.—In developing and implementing a management program under this subsection, a State shall, to the maximum extent practicable, involve local public and private agencies and organizations which have expertise in control of nonpoint sources of pollution.

"(4) DEVELOPMENT ON WATERSHED BASIS.—A State shall, to the maximum extent practicable, develop and implement a management program under this subsection on a watershed-by-watershed basis within such State.

"(c) ADMINISTRATIVE PROVISIONS.—

"(1) COOPERATION REQUIREMENT.—Any report required by subsection (a) and any management program and report required by subsection (b) shall be developed in cooperation with *local, substate regional, and interstate entities which are actively planning for the implementation of nonpoint source pollution controls and have either been certified by the Administrator in accordance with section 208, have worked jointly with the State on water quality management planning under section 205(j), or have been designated by the State legislative body or Governor as water quality management planning agencies for their geographic areas.*

"(2) TIME PERIOD FOR SUBMISSION OF REPORTS AND MANAGEMENT PROGRAMS.—Each report and management program shall be submitted to the Administrator during the 18-month period beginning on the date of the enactment of this section.

"(d) APPROVAL OR DISAPPROVAL OF REPORTS AND MANAGEMENT PROGRAMS.—

"(1) DEADLINE.—Subject to paragraph (2), not later than 180 days after the date of submission to the Administrator of any report or management program under this section (other than subsections (h), (i), and (k)), the Administrator shall either approve or disapprove such report or management program, as the case may be. The Administrator may approve a portion of a management program under this subsection. If the Administrator does not disapprove a report, management program, or portion of a management program in such 180-day period, such report, management program, or portion shall be deemed approved for purposes of this section.

"(2) PROCEDURE FOR DISAPPROVAL.—If, after notice and opportunity for public comment and consultation with appropriate Federal and State agencies and other interested persons, the Administrator determines that—

"(A) the proposed management program or any portion thereof does not meet the requirements of subsection (b)(2) of this section or is not likely to satisfy, in whole or in part, the goals and requirements of this Act;

"(B) adequate authority does not exist, or adequate resources are not available, to implement such program or portion;

"(C) the schedule for implementing such program or portion is not sufficiently expeditious; or

"(D) the practices and measures proposed in such program or portion are not adequate to reduce the level of pollution in navigable waters in the State resulting from nonpoint sources and to improve the quality of navigable waters in the State;

the Administrator shall within 6 months of the receipt of the proposed program notify the State of any revisions or modifications necessary to obtain approval. The State shall thereupon have an additional 3 months to submit its revised management program and the Administrator shall approve or disapprove such revised program within three months of receipt.

"(3) FAILURE OF STATE TO SUBMIT REPORT.—If a Governor of a State does not submit the report required by subsection (a) within the period specified by subsection (c)(2), the Administrator shall, within 30 months after the date of the enactment of this section, prepare a report for such State which makes the

identifications required by paragraphs (1)(A) and (1)(B) of subsection (a). Upon completion of the requirement of the preceding sentence and after notice and opportunity for comment, the Administrator shall report to Congress on his actions pursuant to this section.

"(e) Local Management Programs; Technical Assistance.—If a State fails to submit a management program under subsection (b) or the Administrator does not approve such a management program, a local public agency or organization which has expertise in, and authority to, control water pollution resulting from nonpoint sources in any area of such State which the Administrator determines is of sufficient geographic size may, with approval of such State, request the Administrator to provide, and the Administrator shall provide, technical assistance to such agency or organization in developing for such area a management program which is described in subsection (b) and can be approved pursuant to subsection (d). After development of such management program, such agency or organization shall submit such management program to the Administrator for approval. If the Administrator approves such management program, such agency or organization shall be eligible to receive financial assistance under subsection (h) for implementation of such management program as if such agency or organization were a State for which a report submitted under subsection (a) and a management program submitted under subsection (b) were approved under this section. Such financial assistance shall be subject to the same terms and conditions as assistance provided to a State under subsection (h).

"(f) Technical Assistance for States.—Upon request of a State, the Administrator may provide technical assistance to such State in developing a management program approved under subsection (b) for those portions of the navigable waters requested by such State.

"(g) Interstate Management Conference.—

"(1) Convening of conference; notification; purpose.—If any portion of the navigable waters in any State which is implementing a management program approved under this section is not meeting applicable water quality standards or the goals and requirements of this Act as a result, in whole or in part, of pollution from nonpoint sources in another State, such State may petition the Administrator to convene, and the Administrator shall convene, a management conference of all States which contribute significant pollution resulting from nonpoint sources to such portion. If, on the basis of information available, the Administrator determines that a State is not meeting applicable water quality standards or the goals and requirements of this Act as a result, in whole or in part, of significant pollution from nonpoint sources in another State, the Administrator shall notify such States. The Administrator may convene a management conference under this paragraph not later than 180 days after giving such notification, whether or not the State which is not meeting such standards requests such conference. The purpose of such conference shall be to develop an agreement among such States to reduce the level of pollution in such portion resulting from nonpoint sources and to improve the water quality of such portion. Nothing in such agreement shall supersede or

abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws. This subsection shall not apply to any pollution which is subject to the Colorado River Basin Salinity Control Act. The requirement that the Administrator convene a management conference shall not be subject to the provisions of section 505 of this Act.

"(2) STATE MANAGEMENT PROGRAM REQUIREMENT.—To the extent that the States reach agreement through such conference, the management programs of the States which are parties to such agreements and which contribute significant pollution to the navigable waters or portions thereof not meeting applicable water quality standards or goals and requirements of this Act will be revised to reflect such agreement. Such management programs shall be consistent with Federal and State law.

"(h) GRANT PROGRAM.—

"(1) GRANTS FOR IMPLEMENTATION OF MANAGEMENT PROGRAMS.—Upon application of a State for which a report submitted under subsection (a) and a management program submitted under subsection (b) is approved under this section, the Administrator shall make grants, subject to such terms and conditions as the Administrator considers appropriate, under this subsection to such State for the purpose of assisting the State in implementing such management program. Funds reserved pursuant to section 205(j)(5) of this Act may be used to develop and implement such management program.

"(2) APPLICATIONS.—An application for a grant under this subsection in any fiscal year shall be in such form and shall contain such other information as the Administrator may require, including an identification and description of the best management practices and measures which the State proposes to assist, encourage, or require in such year with the Federal assistance to be provided under the grant.

"(3) FEDERAL SHARE.—The Federal share of the cost of each management program implemented with Federal assistance under this subsection in any fiscal year shall not exceed 60 percent of the cost incurred by the State in implementing such management program and shall be made on condition that the non-Federal share is provided from non-Federal sources.

"(4) LIMITATION ON GRANT AMOUNTS.—Notwithstanding any other provision of this subsection, not more than 15 percent of the amount appropriated to carry out this subsection may be used to make grants to any one State, including any grants to any local public agency or organization with authority to control pollution from nonpoint sources in any area of such State.

"(5) PRIORITY FOR EFFECTIVE MECHANISMS.—For each fiscal year beginning after September 30, 1987, the Administrator may give priority in making grants under this subsection, and shall give consideration in determining the Federal share of any such grant, to States which have implemented or are proposing to implement management programs which will—

"(A) control particularly difficult or serious nonpoint source pollution problems, including, but not limited to, problems resulting from mining activities;

"(B) implement innovative methods or practices for controlling nonpoint sources of pollution, including regulatory programs where the Administrator deems appropriate;

"(C) control interstate nonpoint source pollution problems; or

"(D) carry out ground water quality protection activities which the Administrator determines are part of a comprehensive nonpoint source pollution control program, including research, planning, ground water assessments, demonstration programs, enforcement, technical assistance, education, and training to protect ground water quality from nonpoint sources of pollution.

"(6) AVAILABILITY FOR OBLIGATION.—The funds granted to each State pursuant to this subsection in a fiscal year shall remain available for obligation by such State for the fiscal year for which appropriated. The amount of any such funds not obligated by the end of such fiscal year shall be available to the Administrator for granting to other States under this subsection in the next fiscal year.

"(7) LIMITATION ON USE OF FUNDS.—States may use funds from grants made pursuant to this section for financial assistance to persons only to the extent that such assistance is related to the costs of demonstration projects.

"(8) SATISFACTORY PROGRESS.—No grant may be made under this subsection in any fiscal year to a State which in the preceding fiscal year received a grant under this subsection unless the Administrator determines that such State made satisfactory progress in such preceding fiscal year in meeting the schedule specified by such State under subsection (b)(2).

"(9) MAINTENANCE OF EFFORT.—No grant may be made to a State under this subsection in any fiscal year unless such State enters into such agreements with the Administrator as the Administrator may require to ensure that such State will maintain its aggregate expenditures from all other sources for programs for controlling pollution added to the navigable waters in such State from nonpoint sources and improving the quality of such waters at or above the average level of such expenditures in its two fiscal years preceding the date of enactment of this subsection.

"(10) REQUEST FOR INFORMATION.—The Administrator may request such information, data, and reports as he considers necessary to make the determination of continuing eligibility for grants under this section.

"(11) REPORTING AND OTHER REQUIREMENTS.—Each State shall report to the Administrator on an annual basis concerning (A) its progress in meeting the schedule of milestones submitted pursuant to subsection (b)(2)(C) of this section, and (B) to the extent that appropriate information is available, reductions in nonpoint source pollutant loading and improvements in water quality for those navigable waters or watersheds within the State which were identified pursuant to subsection (a)(1)(A) of this section resulting from implementation of the management program.

"(12) LIMITATION ON ADMINISTRATIVE COSTS.—For purposes of this subsection, administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against activities and programs carried out with a grant under this subsection shall not exceed in any fiscal year 10 percent of the amount of the grant in such year, except that costs of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer programs shall not be subject to this limitation.

"(i) GRANTS FOR PROTECTING GROUNDWATER QUALITY.—

"(1) ELIGIBLE APPLICANTS AND ACTIVITIES.—Upon application of a State for which a report submitted under subsection (a) and a plan submitted under subsection (b) is approved under this section, the Administrator shall make grants under this subsection to such State for the purpose of assisting such State in carrying out groundwater quality protection activities which the Administrator determines will advance the State toward implementation of a comprehensive nonpoint source pollution control program. Such activities shall include, but not be limited to, research, planning, groundwater assessments, demonstration programs, enforcement, technical assistance, education and training to protect the quality of groundwater and to prevent contamination of groundwater from nonpoint sources of pollution.

"(2) APPLICATIONS.—An application for a grant under this subsection shall be in such form and shall contain such information as the Administrator may require.

"(3) FEDERAL SHARE; MAXIMUM AMOUNT.—The Federal share of the cost of assisting a State in carrying out groundwater protection activities in any fiscal year under this subsection shall be 50 percent of the costs incurred by the State in carrying out such activities, except that the maximum amount of Federal assistance which any State may receive under this subsection in any fiscal year shall not exceed $150,000.

"(4) REPORT.—The Administrator shall include in each report transmitted under subsection (m), a report on the activities and programs implemented under this subsection during the preceding fiscal year.

"(j) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out subsections (h) and (i) not to exceed $70,000,000 for fiscal year 1988, $100,000,000 per fiscal year for each of fiscal years 1989 and 1990, and $130,000,000 for fiscal year 1991; except that for each of such fiscal years not to exceed $7,500,000 may be made available to carry out subsection (i). Sums appropriated pursuant to this subsection shall remain available until expended.

"(k) CONSISTENCY OF OTHER PROGRAMS AND PROJECTS WITH MANAGEMENT PROGRAMS.—The Administrator shall transmit to the Office of Management and Budget and the appropriate Federal departments and agencies a list of those assistance programs and development projects identified by each State under subsection (b)(2)(F) for which individual assistance applications and projects will be reviewed pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983. Beginning not later than

sixty days after receiving notification by the Administrator, each Federal department and agency shall modify existing regulations to allow States to review individual development projects and assistance applications under the identified Federal assistance programs and shall accommodate, according to the requirements and definitions of Executive Order 12372, as in effect on September 17, 1983, the concerns of the State regarding the consistency of such applications or projects with the State nonpoint source pollution management program.

"(l) Collection of Information.—The Administrator shall collect and make available, through publications and other appropriate means, information pertaining to management practices and implementation methods, including, but not limited to, (1) information concerning the costs and relative efficiencies of best management practices for reducing nonpoint source pollution; and (2) available data concerning the relationship between water quality and implementation of various management practices to control nonpoint sources of pollution.

"(m) Reports of Administrator.—

"(1) Annual reports.—Not later than January 1, 1988, and each January 1 thereafter, the Administrator shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate, a report for the preceding fiscal year on the activities and programs implemented under this section and the progress made in reducing pollution in the navigable waters resulting from nonpoint sources and improving the quality of such waters.

"(2) Final report.—Not later than January 1, 1990, the Administrator shall transmit to Congress a final report on the activities carried out under this section. Such report, at a minimum, shall—

"(A) describe the management programs being implemented by the States by types and amount of affected navigable waters, categories and subcategories of nonpoint sources, and types of best management practices being implemented;

"(B) describe the experiences of the States in adhering to schedules and implementing best management practices;

"(C) describe the amount and purpose of grants awarded pursuant to subsections (h) and (i) of this section;

"(D) identify, to the extent that information is available, the progress made in reducing pollutant loads and improving water quality in the navigable waters;

"(E) indicate what further actions need to be taken to attain and maintain in those navigable waters (i) applicable water quality standards, and (ii) the goals and requirements of this Act;

"(F) include recommendations of the Administrator concerning future programs (including enforcement programs) for controlling pollution from nonpoint sources; and

"(G) identify the activities and programs of departments, agencies, and instrumentalities of the United States which are inconsistent with the management programs submitted by the States and recommend modifications so that such

activities and programs are consistent with and assist the States in implementation of such management programs.

"(n) Set Aside for Administrative Personnel.—Not less than 5 percent of the funds appropriated pursuant to subsection (j) for any fiscal year shall be available to the Administrator to maintain personnel levels at the Environmental Protection Agency at levels which are adequate to carry out this section in such year.".

(b) Policy for Control of Nonpoint Sources of Pollution.—Section 101(a) is amended by striking out "and" at the end of paragraph (5), by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and", and by adding at the end thereof the following:

"(7) it is the national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this Act to be met through the control of both point and nonpoint sources of pollution.".

(c) Eligibility of Nonpoint Sources.—The last sentence of section 201(g)(1) is amended by—

(1) striking out "sentence," the first place it appears and inserting in lieu thereof "sentences,";

(2) inserting "(A)" after "October 1, 1984, for"; and

(3) inserting before "except that" the following: "and (B) any purpose for which a grant may be made under sections 319 (h) and (i) of this Act (including any innovative and alternative approaches for the control of nonpoint sources of pollution),".

(d) Reservation of Funds.—Section 205(j) is amended by adding at the end the following new paragraph:

"(5) Nonpoint source reservation.—In addition to the sums reserved under paragraph (1), the Administrator shall reserve each fiscal year for each State 1 percent of the sums allotted and available for obligation to such State under this section for each fiscal year beginning on or after October 1, 1986, or $100,000, whichever is greater, for the purpose of carrying out section 319 of this Act. Sums so reserved in a State in any fiscal year for which such State does not request the use of such sums, to the extent such sums exceed $100,000, may be used by such State for other purposes under this title.".

(e) Conforming Amendment.—Section 304(k)(1) is amended by inserting "and nonpoint source pollution management programs approved under section 319 of this Act" after "208 of this Act".

SEC. 317. NATIONAL ESTUARY PROGRAM.

(a) Purposes and Policies.—

(1) Findings.—Congress finds and declares that—

(A) the Nation's estuaries are of great importance for fish and wildlife resources and recreation and economic opportunity;

(B) maintaining the health and ecological integrity of these estuaries is in the national interest;

(C) increasing coastal population, development, and other direct and indirect uses of these estuaries threaten their health and ecological integrity;

(D) long-term planning and management will contribute to the continued productivity of these areas, and will maximize their utility to the Nation; and

(E) better coordination among Federal and State programs affecting estuaries will increase the effectiveness and efficiency of the national effort to protect, preserve, and restore these areas.

(2) Purposes.—The purposes of this section are to—

(A) identify nationally significant estuaries that are threatened by pollution, development, or overuse;

(B) promote comprehensive planning for, and conservation and management of, nationally significant estuaries;

(C) encourage the preparation of management plans for estuaries of national significance; and

(D) enhance the coordination of estuarine research.

(b) Management Program.—Title III is amended by adding at the end thereof the following new section:

"SEC. 320. NATIONAL ESTUARY PROGRAM.

"(a) Management Conference.—

"(1) Nomination of estuaries.—The Governor of any State may nominate to the Administrator an estuary lying in whole or in part within the State as an estuary of national significance and request a management conference to develop a comprehensive management plan for the estuary. The nomination shall document the need for the conference, the likelihood of success, and information relating to the factors in paragraph (2).

"(2) Convening of conference.—

"(A) In general.—In any case where the Administrator determines, on his own initiative or upon nomination of a State under paragraph (1), that the attainment or maintenance of that water quality in an estuary which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water, requires the control of point and nonpoint sources of pollution to supplement existing controls of pollution in more than one State, the Administrator shall select such estuary and convene a management conference.

"(B) Priority consideration.—The Administrator shall give priority consideration under this section to Long Island Sound, New York and Connecticut; Narragansett Bay, Rhode Island; Buzzards Bay, Massachusetts; Puget Sound, Washington; New York-New Jersey Harbor, New York and New Jersey; Delaware Bay, Delaware and New Jersey; Delaware Inland Bays, Delaware; Albemarle Sound, North Carolina; Sarasota Bay, Florida; San Francisco Bay, California; and Galveston Bay, Texas.

"(3) Boundary dispute exception.—In any case in which a boundary between two States passes through an estuary and such boundary is disputed and is the subject of an action in any court, the Administrator shall not convene a management

conference with respect to such estuary before a final adjudication has been made of such dispute.

"(b) Purposes of Conference.—The purposes of any management conference convened with respect to an estuary under this subsection shall be to—

"(1) assess trends in water quality, natural resources, and uses of the estuary;

"(2) collect, characterize, and assess data on toxics, nutrients, and natural resources within the estuarine zone to identify the causes of environmental problems;

"(3) develop the relationship between the inplace loads and point and nonpoint loadings of pollutants to the estuarine zone and the potential uses of the zone, water quality, and natural resources;

"(4) develop a comprehensive conservation and management plan that recommends priority corrective actions and compliance schedules addressing point and nonpoint sources of pollution to restore and maintain the chemical, physical, and biological integrity of the estuary, including restoration and maintenance of water quality, a balanced indigenous population of shellfish, fish and wildlife, and recreational activities in the estuary, and assure that the designated uses of the estuary are protected;

"(5) develop plans for the coordinated implementation of the plan by the States as well as Federal and local agencies participating in the conference;

"(6) monitor the effectiveness of actions taken pursuant to the plan; and

"(7) review all Federal financial assistance program and Federal development project in accordance with the requirements of Executive Order 12372, as in effect on September 17, 1983, to determine whether such assistance program or project would be consistent with and further the purposes and objectives of the plan prepared under this section.

For purposes of paragraph (7), such programs and projects shall not be limited to the assistance programs and development projects subject to Executive Order 12372, but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the plan developed under this section.

"(c) Members of Conference.—The members of a management conference convened under this section shall include, at a minimum, the Administrator and representatives of—

"(1) each State and foreign nation located in whole or in part in the estuarine zone of the estuary for which the conference is convened;

"(2) international, interstate, or regional agencies or entities having jurisdiction over all or a significant part of the estuary;

"(3) each interested Federal agency, as determined appropriate by the Administrator;

"(4) local governments having jurisdiction over any land or water within the estuarine zone, as determined appropriate by the Administrator; and

"(5) affected industries, public and private educational institutions, and the general public, as determined appropriate by the Administrator.

"(d) Utilization of Existing Data.—In developing a conservation and management plan under this section, the management conference shall survey and utilize existing reports, data, and studies relating to the estuary that have been developed by or made available to Federal, interstate, State, and local agencies.

"(e) Period of Conference.—A management conference convened under this section shall be convened for a period not to exceed 5 years. Such conference may be extended by the Administrator, and if terminated after the initial period, may be reconvened by the Administrator at any time thereafter, as may be necessary to meet the requirements of this section.

"(f) Approval and Implementation of Plans.—

"(1) Approval.—Not later than 120 days after the completion of a conservation and management plan and after providing for public review and comment, the Administrator shall approve such plan if the plan meets the requirements of this section and the affected Governor or Governors concur.

"(2) Implementation.—Upon approval of a conservation and management plan under this section, such plan shall be implemented. Funds authorized to be appropriated under titles II and VI and section 319 of this Act may be used in accordance with the applicable requirements of this Act to assist States with the implementation of such plan.

"(g) Grants.—

"(1) Recipients.—The Administrator is authorized to make grants to State, interstate, and regional water pollution control agencies and entities, State coastal zone management agencies, interstate agencies, other public or nonprofit private agencies, institutions, organizations, and individuals.

"(2) Purposes.—Grants under this subsection shall be made to pay for assisting research, surveys, studies, and modeling and other technical work necessary for the development of a conservation and management plan under this section.

"(3) Federal share.—The amount of grants to any person (including a State, interstate, or regional agency or entity) under this subsection for a fiscal year shall not exceed 75 percent of the costs of such research, survey, studies, and work and shall be made on condition that the non-Federal share of such costs are provided from non-Federal sources.

"(h) Grant Reporting.—Any person (including a State, interstate, or regional agency or entity) that receives a grant under subsection (g) shall report to the Administrator not later than 18 months after receipt of such grant and biennially thereafter on the progress being made under this section.

"(i) Authorization of Appropriations.—There are authorized to be appropriated to the Administrator not to exceed $12,000,000 per fiscal year for each of fiscal years 1987, 1988, 1989, 1990, and 1991 for—

"(1) expenses related to the administration of management conferences under this section, not to exceed 10 percent of the amount appropriated under this subsection;

"(2) making grants under subsection (g); and

"(3) monitoring the implementation of a conservation and management plan by the management conference or by the Administrator, in any case in which the conference has been terminated.

The Administrator shall provide up to $5,000,000 per fiscal year of the sums authorized to be appropriated under this subsection to the Administrator of the National Oceanic and Atmospheric Administration to carry out subsection (j).

"(j) RESEARCH.—

"(1) PROGRAMS.—In order to determine the need to convene a management conference under this section or at the request of such a management conference, the Administrator shall coordinate and implement, through the National Marine Pollution Program Office and the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, as appropriate, for one or more estuarine zones—

"(A) a long-term program of trend assessment monitoring measuring variations in pollutant concentrations, marine ecology, and other physical or biological environmental parameter which may affect estuarine zones, to provide the Administrator the capacity to determine the potential and actual effects of alternative management strategies and measures;

"(B) a program of ecosystem assessment assisting in the development of (i) baseline studies which determine the state of estuarine zones and the effects of natural and anthropogenic changes, and (ii) predictive models capable of translating information on specific discharges or general pollutant loadings within estuarine zones into a set of probable effects on such zones;

"(C) a comprehensive water quality sampling program for the continuous monitoring of nutrients, chlorine, acid precipitation dissolved oxygen, and potentially toxic pollutants (including organic chemicals and metals) in estuarine zones, after consultation with interested State, local, interstate, or international agencies and review and analysis of all environmental sampling data presently collected from estuarine zones; and

"(D) a program of research to identify the movements of nutrients, sediments and pollutants through estuarine zones and the impact of nutrients, sediments, and pollutants on water quality, the ecosystem, and designated or potential uses of the estuarine zones.

"(2) REPORTS.—The Administrator, in cooperation with the Administrator of the National Oceanic and Atmospheric Administration, shall submit to the Congress no less often than biennially a comprehensive report on the activities authorized under this subsection including—

"(A) a listing of priority monitoring and research needs;

"(B) an assessment of the state and health of the Nation's estuarine zones, to the extent evaluated under this subsection;

"(C) a discussion of pollution problems and trends in pollutant concentrations with a direct or indirect effect on water quality, the ecosystem, and designated or potential uses of each estuarine zone, to the extent evaluated under this subsection; and

"(D) an evaluation of pollution abatement activities and management measures so far implemented to determine the degree of improvement toward the objectives expressed in subsection (b)(4) of this section.

"(k) DEFINITIONS.—For purposes of this section, the terms 'estuary' and 'estuarine zone' have the meanings such terms have in section 104(n)(4) of this Act, except that the term 'estuarine zone' shall also include associated aquatic ecosystems and those portions of tributaries draining into the estuary up to the historic height of migration of anadromous fish or the historic head of tidal influence, whichever is higher.".

SEC. 318. UNCONSOLIDATED QUATERNARY AQUIFER.

Notwithstanding any other provision of law, no person may—

(1) locate or authorize the location of a landfill, surface impoundment, waste pile, injection well, or land treatment facility over the Unconsolidated Quaternary Aquifer, or the recharge zone or streamflow source zone of such aquifer, in the Rockaway River Basin, New Jersey (as such aquifer and zones are described in the Federal Register, January 24, 1984, pages 2946–2948); or

(2) place or authorize the placement of solid waste in a landfill, surface impoundment, waste pile, injection well, or land treatment facility over such aquifer or zone.

This section may be enforced under sections 309 (a) and (b) of the Federal Water Pollution Control Act. For purposes of section 309(c) of such Act, a violation of this section shall be considered a violation of section 301 of the Federal Water Pollution Control Act.

TITLE IV—PERMITS AND LICENSES

SEC. 401. STORMWATER RUNOFF FROM OIL, GAS, AND MINING OPERATIONS.

(a) LIMITATION ON PERMIT REQUIREMENT.—Section 402(l) is amended by inserting "(1) AGRICULTURAL RETURN FLOWS.—" before "The Administrator" and by adding at the end thereof the following:

"(2) STORMWATER RUNOFF FROM OIL, GAS, AND MINING OPERATIONS.—The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require a permit, for discharges of stormwater runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate products, finished product, by-

product, or waste products located on the site of such operations.".

(b) CONFORMING AMENDMENTS.—Section 402(l) is further amended—

(1) by inserting "LIMITATION ON PERMIT REQUIREMENT.—" after "(l)"; and

(2) by indenting paragraph (1) of such section, as designated by subsection (a) of this section, and aligning such paragraph with paragraph (2) of such section, as added by such subsection (a).

SEC. 402. ADDITIONAL PRETREATMENT OF CONVENTIONAL POLLUTANTS NOT REQUIRED.

Section 402 is amended by adding at the end thereof the following new subsection:

"(m) ADDITIONAL PRETREATMENT OF CONVENTIONAL POLLUTANTS NOT REQUIRED.—To the extent a treatment works (as defined in section 212 of this Act) which is publicly owned is not meeting the requirements of a permit issued under this section for such treatment works as a result of inadequate design or operation of such treatment works, the Administrator, in issuing a permit under this section, shall not require pretreatment by a person introducing conventional pollutants identified pursuant to section 304(a)(4) of this Act into such treatment works other than pretreatment required to assure compliance with pretreatment standards under subsection (b)(8) of this section and section 307(b)(1) of this Act. Nothing in this subsection shall affect the Administrator's authority under sections 307 and 309 of this Act, affect State and local authority under sections 307(b)(4) and 510 of this Act, relieve such treatment works of its obligations to meet requirements established under this Act, or otherwise preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.".

SEC. 403. PARTIAL NPDES PROGRAM.

(a) PARTIAL PERMIT PROGRAM.—Section 402 is amended by adding at the end the following:

"(n) PARTIAL PERMIT PROGRAM.—

"(1) STATE SUBMISSION.—The Governor of a State may submit under subsection (b) of this section a permit program for a portion of the discharges into the navigable waters in such State.

"(2) MINIMUM COVERAGE.—A partial permit program under this subsection shall cover, at a minimum, administration of a major category of the discharges into the navigable waters of the State or a major component of the permit program required by subsection (b).

"(3) APPROVAL OF MAJOR CATEGORY PARTIAL PERMIT PROGRAMS.—The Administrator may approve a partial permit program covering administration of a major category of discharges under this subsection if—

"(A) such program represents a complete permit program and covers all of the discharges under the jurisdiction of a department or agency of the State; and

"(B) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b).

"(4) Approval of major component partial permit programs.—The Administrator may approve under this subsection a partial and phased permit program covering administration of a major component (including discharge categories) of a State permit program required by subsection (b) if—

"(A) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b); and

"(B) the State submits, and the Administrator approves, a plan for the State to assume administration by phases of the remainder of the State program required by subsection (b) by a specified date not more than 5 years after submission of the partial program under this subsection and agrees to make all reasonable efforts to assume such administration by such date.".

(b) Return of State Permit Program to Administrator.—

(1) In general.—Section 402(c) is amended by adding at the end thereof the following new paragraph:

"(4) Limitations on partial permit program returns and withdrawals.—A State may return to the Administrator administration, and the Administrator may withdraw under paragraph (3) of this subsection approval, of—

"(A) a State partial permit program approved under subsection (n)(3) only if the entire permit program being administered by the State department or agency at the time is returned or withdrawn; and

"(B) a State partial permit program approved under subsection (n)(4) only if an entire phased component of the permit program being administered by the State at the time is returned or withdrawn.".

(2) Conforming amendment.—Section 402(c)(1) is amended by striking out "as to those navigable waters" and inserting in lieu thereof "as to those discharges".

SEC. 404. ANTI-BACKSLIDING.

(a) General Rule.—Section 402 is amended by adding at the end thereof the following new subsection:

"(o) Anti-Backsliding.—

"(1) General prohibition.—In the case of effluent limitations established on the basis of subsection (a)(1)(B) of this section, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under section 304(b) subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit. In the case of effluent limitations established on the basis of section 301(b)(1)(C) or section 303(d) or (e), a permit may not be renewed, reissued, or modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit except in compliance with section 303(d)(4).

"(2) Exceptions.—A permit with respect to which paragraph (1) applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant if—

"(A) material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

"(B)(i) information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

"(ii) the Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under subsection (a)(1)(B);

"(C) a less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

"(D) the permittee has received a permit modification under section 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a); or

"(E) the permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

Subparagraph (B) shall not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of this Act or for reasons otherwise unrelated to water quality.

"(3) Limitations.—In no event may a permit with respect to which paragraph (1) applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, reissued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under section 303 applicable to such waters.".

(b) Limitations on Revision of Certain Effluent Limitations.—Section 303(d) of the Act is amended by adding at the end thereof the following new paragraph:

"(4) LIMITATIONS ON REVISION OF CERTAIN EFFLUENT LIMITATIONS.—

"(A) STANDARD NOT ATTAINED.—For waters identified under paragraph (1)(A) where the applicable water quality standard has not yet been attained, any effluent limitation based on a total maximum daily load or other waste load allocation established under this section may be revised only if (i) the cumulative effect of all such revised effluent limitations based on such total maximum daily load or waste load allocation will assure the attainment of such water quality standard, or (ii) the designated use which is not being attained is removed in accordance with regulations established under this section.

"(B) STANDARD ATTAINED.—For waters identified under paragraph (1)(A) where the quality of such waters equals or exceeds levels necessary to protect the designated use for such waters or otherwise required by applicable water quality standards, any effluent limitation based on a total maximum daily load or other waste load allocation established under this section, or any water quality standard established under this section, or any other permitting standard may be revised only if such revision is subject to and consistent with the antidegradation policy established under this section.".

(c) STUDY.—The Administrator shall study—

(1) the extent to which States have reviewed, revised, and adopted water quality standards in accordance with section 24 of the Municipal Wastewater Treatment Construction Grant Amendments of 1981; and

(2) the extent to which modifications of permits issued under section 402(a)(1)(B) of the Federal Water Pollution Control Act for the purpose of reflecting any revisions to water quality standards should be encouraged or discouraged.

The Administrator shall submit a report on such study, together with recommendations, to Congress not later than 2 years after the date of the enactment of this Act.

(d) CONFORMING AMENDMENT.—Section 402(a)(1) is amended by inserting "(A)" after "either" and by inserting "(B)" after "this Act, or".

SEC. 405. MUNICIPAL AND INDUSTRIAL STORMWATER DISCHARGES.

(a) Section 402 is amended by adding at the end thereof the following new subsection:

"(p) MUNICIPAL AND INDUSTRIAL STORMWATER DISCHARGES.—

"(1) GENERAL RULE.—Prior to October 1, 1992, the Administrator or the State (in the case of a permit program approved under section 402 of this Act) shall not require a permit under this section for discharges composed entirely of stormwater.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply with respect to the following stormwater discharges:

"(A) A discharge with respect to which a permit has been issued under this section before the date of the enactment of this subsection.

"(B) A discharge associated with industrial activity.

"(C) A discharge from a municipal separate storm sewer system serving a population of 250,000 or more.

"(D) A discharge from a municipal separate storm sewer system serving a population of 100,000 or more but less than 250,000.

"(E) A discharge for which the Administrator or the State, as the case may be, determines that the stormwater discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

"(3) Permit requirements.—

"(A) Industrial discharges.—Permits for discharges associated with industrial activity shall meet all applicable provisions of this section and section 301.

"(B) Municipal discharge.—Permits for discharges from municipal storm sewers—

"(i) may be issued on a system- or jurisdiction-wide basis;

"(ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and

"(iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

"(4) Permit application requirements.—

"(A) Industrial and large municipal discharges.—Not later than 2 years after the date of the enactment of this subsection, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraphs (2)(B) and (2)(C). Applications for permits for such discharges shall be filed no later than 3 years after such date of enactment. Not later than 4 years after such date of enactment, the Administrator or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit.

"(B) Other municipal discharges.—Not later than 4 years after the date of the enactment of this subsection, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraph (2)(D). Applications for permits for such discharges shall be filed no later than 5 years after such date of enactment. Not later than 6 years after such date of enactment, the Administrator or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit.

"(5) STUDIES.—The Administrator, in consultation with the States, shall conduct a study for the purposes of—

"(A) identifying those stormwater discharges or classes of stormwater discharges for which permits are not required pursuant to paragraphs (1) and (2) of this subsection,

"(B) determining, to the maximum extent practicable, the nature and extent of pollutants in such discharges; and

"(C) establishing procedures and methods to control stormwater discharges to the extent necessary to mitigate impacts on water quality.

Not later than October 1, 1988, the Administrator shall submit to Congress a report on the results of the study described in subparagraphs (A) and (B). Not later than October 1, 1989, the Administrator shall submit to Congress a report on the results of the study described in subparagraph (C).

"(6) REGULATIONS.—Not later than October 1, 1992, the Administrator, in consultation with State and local officials, shall issue regulations (based on the results of the studies conducted under paragraph (5)) which designate stormwater discharges, other than those discharges described in paragraph (2), to be regulated to protect water quality and shall establish a comprehensive program to regulate such designated sources. The program shall, at a minimum, (A) establish priorities, (B) establish requirements for State stormwater management programs, and (C) establish expeditious deadlines. The program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate.".

SEC. 406. SEWAGE SLUDGE.

(a) IDENTIFICATION AND REGULATION OF TOXIC POLLUTANTS.—Section 405(d) is amended—

(1) by inserting "(1) REGULATIONS.—" before "The Administrator, after";

(2) by striking "(1)", "(2)", and "(3)" and inserting in lieu thereof "(A)", "(B)", and "(C)", respectively; and

(3) by adding at the end the following new paragraphs:

"(2) IDENTIFICATION AND REGULATION OF TOXIC POLLUTANTS.—

"(A) ON BASIS OF AVAILABLE INFORMATION.—

"(i) PROPOSED REGULATIONS.—Not later than November 30, 1986, the Administrator shall identify those toxic pollutants which, on the basis of available information on their toxicity, persistence, concentration, mobility, or potential for exposure, may be present in sewage sludge in concentrations which may adversely affect public health or the environment, and propose regulations specifying acceptable management practices for sewage sludge containing each such toxic pollutant and establishing numerical limitations for each such pollutant for each use identified under paragraph (1)(A).

"(ii) FINAL REGULATIONS.—Not later than August 31, 1987, and after opportunity for public hearing, the Ad-

ministrator shall promulgate the regulations required by subparagraph (A)(i).

"(B) Others.—

"(i) Proposed regulations.—Not later than July 31, 1987, the Administrator shall identify those toxic pollutants not identified under subparagraph (A)(i) which may be present in sewage sludge in concentrations which may adversely affect public health or the environment, and propose regulations specifying acceptable management practices for sewage sludge containing each such toxic pollutant and establishing numerical limitations for each pollutant for each such use identified under paragraph (1)(A).

"(ii) Final regulations.—Not later than June 15, 1988, the Administrator shall promulgate the regulations required by subparagraph (B)(i).

"(C) Review.—From time to time, but not less often than every 2 years, the Administrator shall review the regulations promulgated under this paragraph for the purpose of identifying additional toxic pollutants and promulgating regulations for such pollutants consistent with the requirements of this paragraph.

"(D) Minimum standards; compliance date.—The management practices and numerical criteria established under subparagraphs (A), (B), and (C) shall be adequate to protect public health and the environment from any reasonably anticipated adverse effects of each pollutant. Such regulations shall require compliance as expeditiously as practicable but in no case later than 12 months after their publication, unless such regulations require the construction of new pollution control facilities, in which case the regulations shall require compliance as expeditiously as practicable but in no case later than two years from the date of their publication.

"(3) Alternative standards.—For purposes of this subsection, if, in the judgment of the Administrator, it is not feasible to prescribe or enforce a numerical limitation for a pollutant identified under paragraph (2), the Administrator may instead promulgate a design, equipment, management practice, or operational standard, or combination thereof, which in the Administrator's judgment is adequate to protect public health and the environment from any reasonably anticipated adverse effects of such pollutant. In the event the Administrator promulgates a design or equipment standard under this subsection, the Administrator shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment.

"(4) Conditions on permits.—Prior to the promulgation of the regulations required by paragraphs (2), the Administrator shall impose conditions in permits issued to publicly owned treatment works under section 402 of this Act or take such other measures as the Administrator deems appropriate to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge.

"(5) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section is intended to waive more stringent requirements established by this Act or any other law.".

(b) MANNER OF SLUDGE DISPOSAL.—Section 405(e) is amended to read as follows:

"(e) MANNER OF SLUDGE DISPOSAL.—The determination of the manner of disposal or use of sludge is a local determination, except that it shall be unlawful for any person to dispose of sludge from a publicly owned treatment works or any other treatment works treating domestic sewage for any use for which regulations have been established pursuant to subsection (d) of this section, except in accordance with such regulations.".

(c) IMPLEMENTATION THROUGH PERMITS.—Section 405 is further amended by adding at the end thereof the following:

"(f) IMPLEMENTATION OF REGULATIONS.—

"(1) THROUGH SECTION 402 PERMITS.—Any permit issued under section 402 of this Act to a publicly owned treatment works or any other treatment works treating domestic sewage shall include requirements for the use and disposal of sludge that implement the regulations established pursuant to subsection (d) of this section, unless such requirements have been included in a permit issued under the appropriate provisions of subtitle C of the Solid Waste Disposal Act, part C of the Safe Drinking Water Act, the Marine Protection, Research and Sanctuaries Act of 1972, or the Clean Air Act, or under State permit programs approved by the Administrator, where the Administrator determines that such programs assure compliance with any applicable requirements of this section. Not later than December 15, 1986, the Administrator shall promulgate procedures for approval of State programs pursuant to this paragraph.

"(2) THROUGH OTHER PERMITS.—In the case of a treatment works described in paragraph (1) that is not subject to section 402 of this Act and to which none of the other above listed permit programs nor approved State permit authority apply, the Administrator may issue a permit to such treatment works solely to impose requirements for the use and disposal of sludge that implement the regulations established pursuant to subsection (d) of this section. The Administrator shall include in the permit appropriate requirements to assure compliance with the regulations established pursuant to subsection (d) of this section. The Administrator shall establish procedures for issuing permits pursuant to this paragraph.

"(g) STUDIES AND PROJECTS.—

"(1) GRANT PROGRAM; INFORMATION GATHERING.—The Administrator is authorized to conduct or initiate scientific studies, demonstration projects, and public information and education projects which are designed to promote the safe and beneficial management or use of sewage sludge for such purposes as aiding the restoration of abandoned mine sites, conditioning soil for parks and recreation areas, agricultural and horticultural uses, and other beneficial purposes. For the purposes of carrying out this subsection, the Administrator may make grants to State water pollution control agencies, other public or nonprofit agencies, institutions, organizations, and individuals.

In cooperation with other Federal departments and agencies, other public and private agencies, institutions, and organizations, the Administrator is authorized to collect and disseminate information pertaining to the safe and beneficial use of sewage sludge.

"(2) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of carrying out the scientific studies, demonstration projects, and public information and education projects authorized in this section, there is authorized to be appropriated for fiscal years beginning after September 30, 1986, not to exceed $5,000,000.".

(d) ENFORCEMENT.—(1) Section 308(a)(4) is amended by inserting "405," before "and 504".

(2) Section 505(f) is amended by striking out "or" before "(6)", and by inserting before the period "; or (7) a regulation under section 405(d) of this Act,".

(3) Section 509(b)(1)(E) is amended by striking out "or 306" and inserting in lieu thereof "306, or 405".

(e) REMOVAL CREDITS.—The part of the decision of Natural Resources Defense Council, Inc. v. U.S. Environmental Protection Agency, No. 84-3530 (3d. Cir. 1986), which addresses section 405(d) of the Federal Water Pollution Control Act is stayed until August 31, 1987, with respect to—

(1) those publicly owned treatment works the owner or operator of which received authority to revise pretreatment requirements under section 307(b)(1) of such Act before the date of the enactment of this section, and

(2) those publicly owned treatment works the owner or operator of which has submitted an application for authority to revise pretreatment requirements under such section 307(b)(1) which application is pending on such date of enactment and is approved before August 31, 1987.

The Administrator shall not authorize any other removal credits under such Act until the Administrator issues the regulations required by paragraph (2)(A)(ii) of section 405(d) of such Act, as amended by subsection (a) of this section.

(f) CONFORMING AMENDMENTS.—Section 405(d) is further amended—

(1) by inserting "REGULATIONS.—" after "(d)";

(2) by indenting paragraph (1) (as designated by subsection (a)(1) of this section) and aligning such paragraph with paragraph (3), as added by subsection (a)(3); and

(3) in such paragraph (1) by aligning subparagraphs (A), (B), and (C) (as designated by subsection (a)(2) of this section) with subparagraph (C) of paragraph (2), as added by subsection (a)(3) of this section.

SEC. 407. LOG TRANSFER FACILITIES.

(a) AGREEMENT.—The Administrator and Secretary of the Army shall enter into an agreement regarding coordination of permitting for log transfer facilities to designate a lead agency and to process permits required under sections 402 and 404 of the Federal Water Pollution Control Act, where both such sections apply, for discharges associated with the construction and operation of log transfer facilities. The Administrator and Secretary are authorized to act

in accordance with the terms of such agreement to assure that, to the maximum extent practicable, duplication, needless paperwork and delay in the issuance of permits, and inequitable enforcement between and among facilities in different States, shall be eliminated.

(b) Applications and Permits Before October 22, 1985.—Where both of sections 402 and 404 of the Federal Water Pollution Control Act apply, log transfer facilities which have received a permit under section 404 of such Act before October 22, 1985, shall not be required to submit a new application for a permit under section 402 of such Act. If the Administrator determines that the terms of a permit issued on or before October 22, 1985, under section 404 of such Act satisfies the applicable requirements of sections 301, 302, 306, 307, 308, and 403 of such Act, a separate application for a permit under section 402 of such Act shall not thereafter be required. In any case where the Administrator demonstrates, after an opportunity for a hearing, that the terms of a permit issued on or before October 22, 1985, under section 404 of such Act do not satisfy the applicable requirements of sections 301, 302, 306, 307, 308, and 403 of such Act, modifications to the existing permit under section 404 of such Act to incorporate such applicable requirements shall be issued by the Administrator as an alternative to issuance of a separate new permit under section 402 of such Act.

(c) Log Transfer Facility Defined.—For the purposes of this section, the term "log transfer facility" means a facility which is constructed in whole or in part in waters of the United States and which is utilized for the purpose of transferring commercially harvested logs to or from a vessel or log raft, including the formation of a log raft.

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. AUDITS.

Section 501(d) is amended by inserting at the end the following new sentences: "For the purpose of carrying out audits and examinations with respect to recipients of Federal assistance under this Act, the Administrator is authorized to enter into noncompetitive procurement contracts with independent State audit organizations, consistent with chapter 75 of title 31, United States Code. Such contracts may only be entered into to the extent and in such amounts as may be provided in advance in appropriation Acts.".

SEC. 502. COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.

(a) Defined as a State.—Section 502(3) is amended by inserting "the Commonwealth of the Northern Mariana Islands," after "Samoa,".

(b) Defined as Part of United States.—Section 311(a)(5) is amended by striking out "the Canal Zone," and inserting in lieu thereof "the Commonwealth of the Northern Mariana Islands,".

SEC. 503. AGRICULTURAL STORMWATER DISCHARGES.

Section 502(14) (relating to the definition of point source) is amended by inserting after "does not include" the following: "agricultural stormwater discharges and".

SEC. 504. PROTECTION OF INTERESTS OF UNITED STATES IN CITIZEN SUITS.

Section 505(c) is amended by adding at the end thereof the following new paragraph:

"(3) PROTECTION OF INTERESTS OF UNITED STATES.—Whenever any action is brought under this section in a court of the United States, the plaintiff shall serve a copy of the complaint on the Attorney General and the Administrator. No consent judgment shall be entered in an action in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator.".

SEC. 505. JUDICIAL REVIEW AND AWARD OF FEES.

(a) LOCATION; DEADLINE FOR APPEAL.—Section 509(b)(1) is amended—

(1) by striking out "transacts such business" and inserting in lieu thereof, "transacts business which is directly affected by such action"; and

(2) by striking out "ninety" and "ninetieth" and inserting in lieu thereof "120" and "120th", respectively.

(b) VENUE; AWARD OF FEES.—Section 509(b) is amended by adding at the end thereof the following new paragraphs:

"(3) VENUE.—

"(A) SELECTION PROCEDURE.—If applications for review of the same agency action have been filed under paragraph (1) of this subsection in 2 or more Circuit Courts of Appeals of the United States and the Administrator has received written notice of the filing of one or more applications within 30 days or less after receiving written notice of the filing of the first application, then the Administrator shall promptly advise in writing the Administrative Office of the United States Courts that applications have been filed in 2 or more Circuit Courts of Appeals of the United States, and shall identify each court for which he has written notice that such applications have been filed within 30 days or less of receiving written notice of the filing of the first such application. Pursuant to a system of random selection devised for this purpose, the Administrative Office thereupon shall, within 3 business days of receiving such written notice from the Administrator, select the court in which the record shall be filed from among those identified by the Administrator. Upon notification of such selection, the Administrator shall promptly file the record in such court. For the purpose of review of agency action which has previously been remanded to the Administrator, the record shall be filed in the Circuit Court of Appeals of the United States which remanded such action.

"(B) ADMINISTRATIVE PROVISIONS.—Where applications have been filed under paragraph (1) of this subsection in two or more Circuit Courts of Appeals of the United States with respect to the same agency action and the record has been filed in one of such courts pursuant to subparagraph (A), the other courts in which such applications have been filed shall promptly transfer such applications to the Cir-

cuit Court of Appeals of the United States in which the record has been filed. Pending selection of a court pursuant to subparagraph (A), any court in which an application has been filed under paragraph (1) of this subsection may postpone the effective date of the agency action until 15 days after the Administrative Office has selected the court in which the record shall be filed.

"(C) TRANSFERS.—Any court in which an application with respect to any agency action has been filed under paragraph (1) of this subsection, including any court selected pursuant to subparagraph (A), may transfer such application to any other Circuit Court of Appeals of the United States for the convenience of the parties or otherwise in the interest of justice.

"(4) AWARD OF FEES.—In any judicial proceeding under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party whenever it determines that such award is appropriate.".

(c) CONFORMING AMENDMENT FOR CITIZEN SUIT ACTIONS.—The first sentence of section 505(d) is amended by inserting "prevailing or substantially prevailing" before "party".

SEC. 506. INDIAN TRIBES.

Title V is amended by redesignating section 518, and any references thereto, as section 519 and by inserting after section 517 the following new section:

"SEC. 518. INDIAN TRIBES.

"(a) POLICY.—Nothing in this section shall be construed to affect the application of section 101(g) of this Act, and all of the provisions of this section shall be carried out in accordance with the provisions of such section 101(g). Indian tribes shall be treated as States for purposes of such section 101(g).

"(b) ASSESSMENT OF SEWAGE TREATMENT NEEDS; REPORT.—The Administrator, in cooperation with the Director of the Indian Health Service, shall assess the need for sewage treatment works to serve Indian tribes, the degree to which such needs will be met through funds allotted to States under section 205 of this Act and priority lists under section 216 of this Act, and any obstacles which prevent such needs from being met. Not later than one year after the date of the enactment of this section, the Administrator shall submit a report to Congress on the assessment under this subsection, along with recommendations specifying (1) how the Administrator intends to provide assistance to Indian tribes to develop waste treatment management plans and to construct treatment works under this Act, and (2) methods by which the participation in and administration of programs under this Act by Indian tribes can be maximized.

"(c) RESERVATION OF FUNDS.—The Administrator shall reserve each fiscal year beginning after September 30, 1986, before allotments to the States under section 205(e), one-half of one percent of the sums appropriated under section 207. Sums reserved under this subsection shall be available only for grants for the development of

waste treatment management plans and for the construction of sewage treatment works to serve Indian tribes.

"(d) Cooperative Agreements.—In order to ensure the consistent implementation of the requirements of this Act, an Indian tribe and the State or States in which the lands of such tribe are located may enter into a cooperative agreement, subject to the review and approval of the Administrator, to jointly plan and administer the requirements of this Act.

"(e) Treatment as States.—The Administrator is authorized to treat an Indian tribe as a State for purposes of title II and sections 104, 106, 303, 305, 308, 309, 314, 319, 401, 402, and 404 of this Act to the degree necessary to carry out the objectives of this section, but only if—

"(1) the Indian tribe has a governing body carrying out substantial governmental duties and powers;

"(2) the functions to be exercised by the Indian tribe pertain to the management and protection of water resources which are held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation; and

"(3) the Indian tribe is reasonably expected to be capable, in the Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this Act and of all applicable regulations.

Such treatment as a State may include the direct provision of funds reserved under subsection (c) to the governing bodies of Indian tribes, and the determination of priorities by Indian tribes, where not determined by the Administrator in cooperation with the Director of the Indian Health Service. The Administrator, in cooperation with the Director of the Indian Health Service, is authorized to make grants under title II of this Act in an amount not to exceed 100 percent of the cost of a project. Not later than 18 months after the date of the enactment of this section, the Administrator shall, in consultation with Indian tribes, promulgate final regulations which specify how Indian tribes shall be treated as States for purposes of this Act. The Administrator shall, in promulgating such regulations, consult affected States sharing common water bodies and provide a mechanism for the resolution of any unreasonable consequences that may arise as a result of differing water quality standards that may be set by States and Indian tribes located on common bodies of water. Such mechanism shall provide for explicit consideration of relevant factors including, but not limited to, the effects of differing water quality permit requirements on upstream and downstream dischargers, economic impacts, and present and historical uses and quality of the waters subject to such standards. Such mechanism should provide for the avoidance of such unreasonable consequences in a manner consistent with the objective of the Act.

"(f) Grants for Nonpoint Source Programs.—The Administrator shall make grants to an Indian tribe under section 319 of this Act as though such tribe was a State. Not more than one-third of one percent of the amount appropriated for any fiscal year under section 319 may be used to make grants under this subsection. In

addition to the requirements of section 319, an Indian tribe shall be required to meet the requirements of paragraphs (1), (2), and (3) of subsection (d) of this section in order to receive such a grant.

"(g) ALASKA NATIVE ORGANIZATIONS.—No provision of this Act shall be construed to—

"(1) grant, enlarge, or diminish, or in any way affect the scope of the governmental authority, if any, of any Alaska Native organization, including any federally-recognized tribe, traditional Alaska Native council, or Native council organized pursuant to the Act of June 18, 1934 (48 Stat. 987), over lands or persons in Alaska;

"(2) create or validate any assertion by such organization or any form of governmental authority over lands or persons in Alaska; or

"(3) in any way affect any assertion that Indian country, as defined in section 1151 of title 18, United States Code, exists or does not exist in Alaska.

"(h) DEFINITIONS.—For purposes of this section, the term—

"(1) 'Federal Indian reservation' means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; and

"(2) 'Indian tribe' means any Indian tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.".

SEC. 607. DEFINITION OF POINT SOURCE.

For purposes of the Federal Water Pollution Control Act, the term "point source" includes a landfill leachate collection system.

SEC. 508. SPECIAL PROVISIONS REGARDING CERTAIN DUMPING SITES.

(a) FINDING.—The Congress finds that the New York Bight Apex is no longer a suitable location for the ocean dumping of municipal sludge.

(b) GENERAL RULE.—Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.) is further amended by inserting after section 104 the following new section:

"SPECIAL PROVISIONS REGARDING CERTAIN DUMPING SITES

"SEC. 104A. (a) NEW YORK BIGHT APEX.—(1) For purposes of this subsection:

"(A) The term 'Apex' means the New York Bight Apex consisting of the ocean waters of the Atlantic Ocean westward of 73 degrees 30 minutes west longitude and northward of 40 degrees 10 minutes north latitude.

"(B) The term 'Apex site' means that site within the Apex at which the dumping of municipal sludge occurred before October 1, 1983.

"(C) The term 'eligible authority' means any sewerage authority or other unit of State or local government that on November 2, 1983, was authorized under court order to dump municipal sludge at the Apex site.

"(2) No person may apply for a permit under this title in relation to the dumping of, or the transportation for purposes of dumping, municipal sludge within the Apex unless that person is an eligible authority.

"(3) The Administrator may not issue, or renew, any permit under this title that authorizes the dumping of, or the transportation for purposes of dumping, municipal sludge within the Apex after the earlier of—

"(A) December 15, 1987; or

"(B) the day determined by the Administrator to be the first day on which municipal sludge generated by eligible authorities can reasonably be dumped at a site designated under section 102 other than a site within the Apex.

"(b) Restriction on Use of the 106-Mile Site.—The Administrator may not issue or renew any permit under this title which authorizes any person, other than a person that is an eligible authority within the meaning of subsection (a)(1)(C), to dump, or to transport for the purposes of dumping, municipal sludge within the site designated under section 102(c) by the Administrator and known as the '106-Mile Ocean Waste Dump Site' (as described in 49 F.R. 19005).".

SEC. 509. OCEAN DISCHARGE RESEARCH PROJECTS.

(a) In General.—Notwithstanding any other provision of law, the Administrator is authorized to issue a research permit to the Orange County, California, Sanitation Districts for the discharge of preconditioned municipal sewage sludge into the ocean for the purpose of enabling research to be conducted in assessing and analyzing the effects of disposing of sewage sludge by pipeline into ocean waters—

(1) if the Administrator is satisfied that such local governmental agency is actively pursuing long-term land-based options for the handling of its sludge with special emphasis on remote disposal alternatives set forth in the 1980 LA/OMA sludge management project and on reuse of sludge or use of recycled sludge; and

(2) if the Administrator determines that there is no likelihood of an unacceptable adverse effect on the environment as a result of issuance of such permit and that such permit would meet the requirements of paragraph (2) of section 301(h) of the Federal Water Pollution Control Act, as amended by this Act, and of the sentences following the first sentence of such section if such permit were being issued under such section.

(b) Permit Terms.—

(1) Period.—The permit for the discharge of sludge shall be for a period of 5 years commencing on the date of such discharge and shall not be extended or renewed.

(2) Monitoring.—Such permit shall provide for monitoring (including whole effluent monitoring) of permitted discharges and other discharges into the ocean in the same area and the effects of such discharges (including cumulative effects) in conformance with requirements established by the Administrator, after consultation with appropriate Federal and State agencies; and for the reporting of such monitoring to Congress and the Administrator every 6 months.

(3) Volume of discharge.—Such permit shall provide that the volume of such local agency's sludge disposed of by such experimental pipeline shall be no more than one and one-half times that being disposed of by such remote disposal and alternatives for the reuse of sludge and the use of recycled sludge. In no event shall the agency dispose of more than 50 percent of its sludge by the pipeline.

(4) Termination.—The permit shall provide for termination of the permit if the Administrator determines that the disposal of sewage sludge is resulting in an unacceptable adverse impact on fish, shellfish, and wildlife. The Administrator may terminate a permit issued under this section if the Administrator determines that there has been a decline in ambient water quality of the receiving waters during the period of the permit even if a direct cause and effect relationship cannot be shown. If the effluent from a source with a permit issued under this section is contributing to a decline in ambient water quality of the receiving waters, the Administrator shall terminate such permit.

(c) Limitation on Precedence.—The facts and circumstances described in subsection (a) present a unique situation which will not establish a precedent for the relaxation of the requirements of the Federal Water Pollution Control Act applicable to similarly situated discharges.

(d) Report.—Such districts shall report the results of the program and an analysis of such program to Congress under this section not later than four and one-half years after issuance of the permit.

SEC. 510. SAN DIEGO, CALIFORNIA.

(a) Purpose.—The purpose of this section is to protect the economy, public health, environment, surface water and public beaches, and water quality of the city of San Diego, California, and surrounding areas, which are endangered and are being polluted by raw sewage emanating from the city of Tijuana, Mexico.

(b) Construction Grants.—Upon approval of the necessary plans and specifications, the Administrator is authorized to make grants to the Secretary of State, acting through the American Section of the International Boundary and Water Commission (hereinafter in this section referred to as the "Commission"), or any other Federal agency or any other appropriate commission or entity designated by the President. Such grants shall be for construction of a project consisting of—

(1) defensive treatment works to protect the residents of the city of San Diego, California, and surrounding areas from pollution resulting from any inadequacies or breakdowns in wastewater treatment works and systems in Mexico; and

(2) treatment works in the city of San Diego, California, to provide primary or more advanced treatment of municipal sewage and industrial waste from Mexico, including the city of Tijuana, Mexico.

(c) Limitation on Grants.—Notwithstanding subsection (b), the Administrator may make grants for construction of treatment works described in subsection (b)(2) only if, after public notice and comment, the Administrator determines that treatment works in

Mexico, in conjunction with any defensive treatment works constructed under this or any other Act, are not sufficient to protect the residents of the city of San Diego, California, and surrounding areas from water pollution originating in Mexico.

(d) OPERATION AND MAINTENANCE.—The Commission or such other agency, commission, or entity as may be designated under subsection (b) is authorized to operate and maintain any treatment works constructed under subsection (b) in order to accomplish the purposes of this section.

(e) APPROVAL OF PLANS.—Any treatment works for which a grant is made under this section shall be constructed in accordance with plans developed by the Commission or such other agency, commission, or entity as may be designated under subsection (b), in consultation with the city of San Diego, and approved by the Administrator to meet the construction standards which would be applicable if such treatment works were being constructed under title II of the Federal Water Pollution Control Act.

(f) FEDERAL SHARE.—Construction of the treatment works under subsection (b) shall be at full Federal expense less any costs paid by the State of California and less any costs paid by the Government of Mexico as a result of agreements negotiated with the United States.

(g) OCEAN OUTFALL PERMIT.—Notwithstanding section 301(j) of the Federal Water Pollution Control Act, upon application of the city of San Diego, California, the Administrator may issue a permit under section 301(h) of such Act which modifies the requirements of section 301(b)(1)(B) of such Act to permit the discharge of pollutants for any ocean outfall constructed with Federal assistance under this section if the Administrator finds that issuing such permit is in the best interests of achieving the goals and requirements of such Act. The Administrator may waive the requirements of section 301(h)(5) of such Act with respect to the issuance of such permit if the Administrator finds that such waiver is in the best interests of achieving the goals and requirements of such Act.

(h) TREATMENT OF SAN DIEGO SEWAGE.—If any treatment works constructed pursuant to this section becomes no longer necessary to provide protection from pollution originating in Mexico, the city of San Diego, California, may use such treatment works to treat municipal and individual waste originating in the city of San Diego and surrounding areas if the city of San Diego enters into a binding agreement with the Administrator to pay to the United States 45 percent of the costs incurred in the construction of such treatment works.

(i) DEFINITIONS.—For purposes of this section, the terms "construction" and "treatment works" have the meanings such terms have under section 212 of the Federal Water Pollution Control Act.

(j) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal years beginning after September 30, 1986, such sums as may be necessary to the Administrator to make grants under this section and such sums as may be necessary to the Commission or such other agency, commission, or entity as the President may designate under subsection (b), to carry out this section.

SEC. 511. LIMITATION ON DISCHARGE OF RAW SEWAGE BY NEW YORK CITY.

(a) IN GENERAL.—

(1) North river plant.—If the wastewater treatment plant identified in the consent decree as the North River plant has not achieved advanced preliminary treatment as required under the terms of the consent decree by August 1, 1986, the city of New York shall not discharge raw sewage from the drainage area of such plant (as defined in the consent decree) into navigable waters after such date in an amount which is greater for any 30-day period than an amount equal to 30 times the average daily amount of raw sewage discharged from such drainage area during the 12-month period ending on the earlier of the date on which such plant becomes operational or March 15, 1986 (as determined by the Administrator), except as provided in subsection (b).

(2) Red hook plant.—If the wastewater treatment plant identified in the consent decree as the Red Hook plant has not achieved advanced preliminary treatment as required under the terms of the consent decree by August 1, 1987, the city of New York shall not discharge raw sewage from the drainage area of such plant (as defined in the consent decree) into navigable waters after such date in an amount which is greater for any 30-day period than an amount equal to 30 times the average daily amount of raw sewage discharged from such drainage area during the 12-month period ending on the earlier of the date on which such plant becomes operational or March 15, 1987 (as determined by the Administrator), except as provided in subsection (b).

(b) Waivers.—

(1) Interruption of plant operation.—In the event of any significant interruption in the operation of the North River plant or the Red Hook plant caused by an event described in subparagraph (A), (B), or (C) of paragraph (5) occurring after the applicable deadline established under subsection (a), the Administrator shall waive the limitation of subsection (a) with respect to such plant, but only to such extent and for such limited period of time as may be reasonably necessary for the city of New York to resume operation of such plant.

(2) Increased precipitation.—In the event that the volume of precipitation occurring after the applicable deadline established under subsection (a) causes the discharge of raw sewage to exceed the limitation under subsection (a), the Administrator shall waive the limitation of subsection (a) with respect to either or both such plants, but only to such extent and for such limited period of time as the Administrator determines to be necessary to take into account the increased discharge caused by such volume of precipitation.

(3) Variations in certain north river drainage area discharges.—In the event that an increase in discharges from the North River drainage area constituting a violation of subsection (a)(1) is due to a random or seasonal variation, and that any sewer hookup occurring, or permit for a sewer hookup granted, after July 31, 1986, is not responsible for such violation, the Administrator shall waive the limitation of subsection (a)(1), but only to such extent and for such limited period of

time as the Administrator determines to be reasonably necessary to take into account such random or seasonal variation.

(4) Variations in certain Red Hook drainage area discharges.—In the event that an increase in discharges from the Red Hook drainage area constituting a violation of subsection (a)(2) is due to a random or seasonal variation, and that any sewer hookup occurring, or permit for a sewer hookup granted, after July 31, 1987, is not responsible for such violation, the Administrator shall waive the limitation of subsection (a)(2), but only to such extent and for such limited period of time as the Administrator determines to be reasonably necessary to take into account such random or seasonal variation.

(5) Circumstances beyond city's control.—The Administrator shall extend either deadline under paragraph (1) or (2) of subsection (a) to such extent and for such limited period of time as may be reasonably required to take into account any—

(A) act of war,

(B) unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight, or

(C) other circumstances beyond the control of the city of New York, except such circumstances shall not include (i) the unavailability of Federal funds under section 201 of the Federal Water Pollution Control Act, (ii) the unavailability of funds from the city of New York or the State of New York, or (iii) a policy decision made by the city of New York or the State of New York to delay the achievement of advanced preliminary treatment at the North River plant or Red Hook plant beyond the applicable deadline set forth in subsection (a).

(c) Penalties.—Except as otherwise provided in subsection (b), any violation of subsection (a) shall be considered to be a violation of section 301 of the Federal Water Pollution Control Act, and all provisions of such Act relating to violations of such section 301 shall apply.

(d) Consent Decree Defined.—For purposes of this section, the term "consent decree" means the consent decree entered into by the Environmental Protection Agency, the city of New York, and the State of New York, on December 30, 1982, relating to construction and operation of the North River and Red Hook wastewater treatment plants.

(e) Cooperation.—The Administrator shall work with the city of New York to eliminate the discharge of raw sewage by such city at the earliest practicable date.

(f) Savings Clause.—Nothing in this section shall be construed as modifying the terms of the consent decree.

(g) Sense of Congress.—It is the sense of Congress that the Administrator should not agree to any further modification of the consent decree with respect to the schedule for achieving advanced preliminary treatment.

(h) Termination Dates.—

(1) North river plant.—The provisions of this section shall remain in effect with respect to the North River drainage area

until such time as the North River plant has achieved advanced preliminary treatment (as defined in the consent decree) for a period of six consecutive months.

(2) RED HOOK PLANT.—The provisions of this section shall remain in effect with respect to the Red Hook drainage area until such time as the Red Hook plant has achieved advanced preliminary treatment (as defined in the consent decree) for a period of six consecutive months.

(i) MONITORING ACTIVITIES.—The Administrator shall promptly establish and carry out a program within available funds to implement the monitoring activities which may be required under subsection (a).

(j) ESTABLISHMENT OF METHODOLOGIES.—The Administrator shall establish the methodologies, data base, and any other information required for making determinations under subsection (b)—

(1) for the North River drainage area (as defined in the consent decree) by July 31, 1986, unless the requirements of subsection (h)(1) have been satisfied, and

(2) for the Red Hook drainage area (as defined by the consent decree) by July 31, 1987, unless the requirements of subsection (h)(2) have been satisfied.

(k) VIOLATIONS.—In carrying out this section, if the Administrator finds that a violation of subsection (a) has occurred, the Administrator shall also determine, within 30 days after such finding, whether a provision of subsection (b) applies. If the Administrator requires information from the city of New York in order to determine whether a provision of subsection (b) applies, the Administrator shall request such information. If the city of New York does not supply the information requested by the Administrator, the Administrator shall determine that subsection (b) does not apply. The city of New York shall be responsible only for such expenses as are necessary to provide such requested information. Enforcement action pursuant to subsection (c) shall be commenced at the end of such 30 days unless a provision of subsection (b) applies.

SEC. 512. OAKWOOD BEACH AND RED HOOK PROJECTS, NEW YORK.

(a) RELOCATION OF NATURAL GAS FACILITIES.—Notwithstanding any provision of the Federal Water Pollution Control Act, the Administrator shall pay, to the extent provided in appropriation Acts, in the same proportion as the Federal share of other project costs, all expenses for the relocation of facilities for the distribution of natural gas with respect to the entire wastewater treatment works known as the Oakwood Beach (EPA Grant Numbered 360392) and Red Hook (EPA Grant Numbered 360394) projects, New York.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal years beginning after September 30, 1986, not to exceed $7,000,000 to carry out this section.

SEC. 513. BOSTON HARBOR AND ADJACENT WATERS.

(a) GRANTS.—The Administrator shall make grants to the Massachusetts Water Resource Authority for purposes of—

(1) assessing the principal factors having an adverse effect on the environmental quality of Boston Harbor and its adjacent waters;

(2) developing and implementing a management program to improve the water quality of such Harbor and waters; and

(3) constructing necessary waste water treatment works for providing secondary treatment for the areas served by such authority.

(b) FEDERAL SHARE.—The Federal share of projects described in subsection (a) shall not exceed 75 percent of the cost of construction thereof.

(c) EMERGENCY IMPROVEMENTS.—The Administrator is authorized and directed to make grants to the Massachusetts Water Resource Authority for a project to undertake emergency improvements at the Deer Island Waste Water Treatment Plant in Boston, Massachusetts. The Federal share of such project shall not exceed 75 percent of the cost of carrying out such improvements.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $100,000,000 to carry out this section for fiscal years beginning after September 30, 1986, to remain available until expended. Such sums shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.

SEC. 514. WASTEWATER RECLAMATION DEMONSTRATION.

(a) AUTHORITY TO MAKE GRANTS.—The Administrator is authorized to make a grant to the San Diego Water Reclamation Agency, California, to demonstrate and field test for public use innovative processes which advance the technology of wastewater reclamation and which promote the use of reclaimed wastewater.

(b) FEDERAL SHARE.—The Federal share of grants made under this section shall be 85 percent of the costs of conducting such demonstration and field test.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated not to exceed $2,000,000 to carry out this section for fiscal years beginning after September 30, 1986.

SEC. 515. DES MOINES, IOWA.

(a) GRANT.—The Administrator is authorized to make a grant to the city of Des Moines, Iowa, for construction of the Central Sewage Treatment Plant component of the Des Moines, Iowa, metropolitan area project. The Federal share of such project shall be 75 percent of the cost of construction.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section not to exceed $50,000,000 for fiscal years beginning after September 30, 1986. Such sums shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.

SEC. 516. STUDY OF DE MINIMIS DISCHARGES.

(a) STUDY.—The Administrator shall conduct a study of discharges of pollutants into the navigable waters and their regulation under the Federal Water Pollution Control Act to determine whether or not there are discharges of pollutants into such waters in amounts which, in terms of volume, concentration, and type of pollutant, are not significant and to determine the most effective and appropriate methods of regulating any such discharges.

(b) Report.*—Not later than 1 year after the date of the enactment of this Act, the Administrator shall submit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of such study along with recommendations and findings concerning the most effective and appropriate methods of regulating any discharges of pollutants into the navigable waters in amounts which the Administrator determines under such study to be not significant.*

SEC. 517. STUDY OF EFFECTIVENESS OF INNOVATIVE AND ALTERNATIVE PROCESSES AND TECHNIQUES.

(a) Effectiveness Study.*—The Administrator shall study the effectiveness on waste treatment of innovative and alternative wastewater treatment processes and techniques referred to in section 201(g)(5) of the Federal Water Pollution Control Act which have been utilized in treatment works constructed under such Act. In conducting such study, the Administrator shall compile information, by State, on the types of such processes and techniques utilized, on the number of facilities constructed with such processes and techniques, and a description of such processes and techniques which have not performed to design standards. The Administrator shall also determine which States have not obligated the full amount set aside under section 205(i) of such Act for such processes and techniques and the reasons for each such State's failure to make such obligations.*

(b) Report.*—Not later than one year after the date of the enactment of this Act, the Administrator shall submit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of such study, along with recommendations for providing more effective incentives for innovative and alternative wastewater treatment processes and techniques.*

SEC. 518. STUDY OF TESTING PROCEDURES.

(a) Study.*—The Administrator shall study the testing procedures for analysis of pollutants established under section 304(h) of the Federal Water Pollution Control Act. Such study shall include, but not be limited to, an analysis of the adequacy and standardization of such procedures. In conducting the analysis of the standardization of such procedures, the Administrator shall consider the extent to which such procedures are consistent with comparable procedures established under other Federal laws.*

(b) Report.*—Not later than 1 year after the date of the enactment of this Act, the Administrator shall submit a report on the results of the study conducted under this subsection, together with recommendations for modifying the test procedures referred to in subsection (a) to improve their effectiveness, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.*

SEC. 519. STUDY OF PRETREATMENT OF TOXIC POLLUTANTS.

(a) Study.*—The Administrator shall study—*

(1) the adequacy of data on environmental impacts of toxic industrial pollutants discharged from publicly owned treatment works;

(2) the extent to which secondary treatment at publicly owned treatment works removes toxic pollutants;

(3) the capability of publicly owned treatment works to revise pretreatment requirements under section 307(b)(1) of the Federal Water Pollution Control Act;

(4) possible alternative regulatory strategies for protecting the operations of publicly owned treatment works from industrial discharges, and shall evaluate the extent to which each such strategy identified may be expected to achieve the goals of this Act;

(5) for each such alternative regulatory strategy, the extent to which removal of toxic pollutants by publicly owned treatment works results in contamination of sewage sludge and the extent to which pretreatment requirements may prevent such contamination or improve the ability of publicly owned treatment works to comply with sewage sludge criteria developed under section 405 of the Federal Water Pollution Control Act; and

(6) the adequacy of Federal, State, and local resources to establish, implement, and enforce multiple pretreatment limits for toxic pollutants for each such alternative strategy.

(b) REPORT.—Not later than 4 years after the date of the enactment of this Act, the Administrator shall submit a report on the results of such study along with recommendations for improving the effectiveness of pretreatment requirements to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

SEC. 520. STUDIES OF WATER POLLUTION PROBLEMS IN AQUIFERS.

(a) STUDIES.—The Administrator, in conjunction with State and local agencies and after providing an opportunity for full public participation, shall conduct studies for the purpose of identifying existing and potential point and nonpoint sources of pollution, and of identifying measures and practices necessary to control such sources of pollution, in the following groundwater systems and aquifers:

(1) the groundwater system of the Upper Santa Cruz Basin and the Avra-Altar Basin of Pima, Pinal, and Santa Cruz Counties, Arizona;

(2) the Spokane-Rathdrum Valley Aquifer, Washington and Idaho;

(3) the Nassau and Suffolk Counties Aquifer, New York;

(4) the Whidbey Island Aquifer, Washington;

(5) the Unconsolidated Quaternary Aquifer, Rockaway River area, New Jersey;

(6) contaminated ground water under Litchfield, Hartford, Fairfield, Tolland, and New Haven counties, Connecticut; and

(7) the Sparta Aquifer, Arkansas.

(b) REPORTS.—Not later than 2 years after the date of the enactment of this Act, the Administrator shall submit to Congress a report on the studies conducted under this section.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $7,000,000 for fiscal years beginning after September 30, 1986, to carry out this section.

SEC. 521. GREAT LAKES CONSUMPTIVE USE STUDY.

(a) STUDY OF CONSUMPTIVE USES.—In recognition of the serious impacts on the Great Lakes environment that may occur as a result of increased consumption of Great Lakes water, including loss of wetlands and reduction of fish spawning and habitat areas, as well as serious economic losses to vital Great Lakes industries, and in recognition of the national goal to provide environmental protection and preservation of our natural resources while allowing for continued economic growth, the Secretary of the Army in cooperation with the Administrator, other interested departments, agencies, and instrumentalities of the United States, and the 8 Great Lakes States, is authorized to conduct a study of the effects of Great Lakes water consumption on economic growth and environmental quality in the Great Lakes region and of control measures that can be implemented to reduce the quantity of water consumed.

(b) MATTERS INCLUDED.—The study authorized by this section shall at a minimum include the following:

(1) a review of the methodologies used to forecast Great Lakes consumptive uses, including an analysis of the sensitivity of key variables affecting such uses;

(2) an analysis of the effect that enforcement of provisions of the Federal Water Pollution Control Act relating to thermal discharges has had on consumption of Great Lakes water;

(3) an analysis of the effect of laws, regulations, and national policy objectives on consumptive uses of Great Lakes water used in manufacturing;

(4) an analysis of the associated environmental impacts and of the economic effects on industry and other interests in the Great Lakes region associated with individual consumptive use control strategies; and

(5) a summary discussion containing recommendations for methods of controlling consumptive uses which methods maximize benefits to the Great Lakes ecosystem and also provide for continued full economic growth for consuming industries as well as other industries which depend on the use of Great Lakes water.

(c) GREAT LAKES STATES DEFINED.—For purposes of this section, the term "Great Lakes States" means Minnesota, Wisconsin, Illinois, Ohio, Michigan, Indiana, Pennsylvania, and New York.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal years beginning after September 30, 1986, $750,000 to carry out this section. Sums appropriated under this section shall remain available until expended.

SEC. 522. SULFIDE CORROSION STUDY.

(a) STUDY.—The Administrator shall conduct a study of the corrosive effects of sulfides in collection and treatment systems, the extent to which the uniform imposition of categorical pretreatment standards will exacerbate such effects, and the range of available options to deal with such effects.

(b) CONSULTATION.—The study required by this section shall be conducted in consultation with the Los Angeles City and County sanitation agencies.

(c) Report.—Not later than 1 year after the date of the enactment of this Act, the Administrator shall submit a report on the results of the study, together with recommendations for measures to reduce the corrosion of treatment works, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(d) Authorization of Appropriations.—There is authorized to be appropriated $1,000,000 to carry out this section for fiscal years beginning after September 30, 1986.

SEC. 523. STUDY OF RAINFALL INDUCED INFILTRATION INTO SEWER SYSTEMS.

(a) Study.—The Administrator shall study problems associated with rainfall induced infiltration into wastewater treatment sewer systems. As part of such study, the Administrator shall study appropriate methods of regulating rainfall induced infiltration into the sewer system of the East Bay Municipal Utility District, California.

(b) Report.—Not later than one year after the date of the enactment of this Act, the Administrator shall submit to Congress a report on the results of such study, along with recommendations on reasonable methods to reduce such infiltration.

SEC. 524. DAM WATER QUALITY STUDY.

The Administrator, in cooperation with interested States and Federal agencies, shall study and monitor the effects on the quality of navigable waters attributable to the impoundment of water by dams. The results of such study shall be submitted to Congress not later than December 31, 1987.

SEC. 525. STUDY OF POLLUTION IN LAKE PEND OREILLE, IDAHO.

The Administrator shall conduct a comprehensive study of the sources of pollution in Lake Pend Oreille, Idaho, and the Clark Fork River and its tributaries, Idaho, Montana, and Washington, for the purpose of identifying the sources of such pollution. In conducting such study, the Administrator shall consider existing studies, surveys, and test results concerning such pollution. The Administrator shall report to Congress the findings and recommendations concerning the study conducted under this section.

And the House agree to the same.

Robert A. Roe,
Glenn M. Anderson,
Norman Y. Mineta,
James L. Oberstar,
Bob Edgar,
Edolphus Towns,
James J. Howard,
Gene Snyder,
John Paul Hammerschmidt,
Arlan Stangeland,
Bill Clinger,
Bud Shuster,

As additional conferees, solely for sections 59 and 73 of the House amendment and modifications committed to conference:

Henry J. Nowak,

Solely for sections 5, 16, 30(a), 34(b), and 45 of the House amendment and modifications committed to conference:

J. ROY ROWLAND,
Managers on the Part of the House.

ROBERT T. STAFFORD,
JOHN CHAFEE,
AL SIMPSON,
DAVID DURENBERGER,
LLOYD BENTSEN,
GEORGE MITCHELL,
DANIEL MOYNIHAN,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1128) to amend the Clean Water Act, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

SHORT TITLE

Senate bill

The Senate bill may be cited as the Clean Water Act Amendments of 1985.

House amendments

The House amendment provides that it may be cited as the Water Quality Renewal Act of 1985.

Conference substitute

The conference substitute may be cited as the Water Quality Act of 1986.

AMENDMENTS OF FEDERAL WATER POLLUTION CONTROL ACT, DEFINITION

Senate bill

No comparable provision.

House amendments

The House bill provides that unless provided otherwise, all amendments to, or repeal of, a section or provision will be considered to be amendments to, or repeal of, a section or other provisions of the Federal Water Pollution Control Act. The amendment also defines "Administrator" for purposes of the bill to mean the Administrator of the Environmental Protection Agency.

Conference substitute

The conference substitute adopts the House provisions.

LIMITATION ON PAYMENTS

Senate bill

No comparable provision.

House amendment

The House amendment provides that no payments may be made undr this Act except to the extent provided in advance in appropriation Acts.

Conference substitute

The conference substitute adopts the House provision.

AUTHORIZATIONS OF APPROPRIATIONS

Senate bill

The Senate bill continues authorizations for a number of programs, most of which have existed since the Federal Water Pollution Control Act (now referred to as the Clean Water Act) was enacted in 1972. These include research, manpower training, forecasting, grants to State and interstate water pollution control agencies, training grants and scholarships to institutions of higher education, grants for the Clean Lakes program, and authorizations for all other sections of the Act for which funds are not specifically authorized elsewhere. Authorizations contained in this section continue these programs at fiscal year 1982 levels for fiscal years 1986 through 1989.

Section 104(u)(1) is amended to authorize $22,770,000 annually for such activities as research technical services, investigations, monitoring and coordination.

Section 104(u) is amended to provide $3 million annually for the manpower development training program provided for by section 104(g)(1). This program provides assistance to States and other entities to develop trained personnel to operate and maintain sewage treatment works. $1.5 million is authorized annually for the employment needs and forecasting program provided for by section 104(g)(2).

Section 106(a)(2) is amended to provide $75 million annually for grants to States and interstate agencies to assist them in administering programs for the prevention, reduction, and elimination of pollution, including enforcement directly through appropriate State enforcement officers or agencies.

Section 112(c) authorizes $7 million per year for the program of training grants and scholarships to institutions of higher education to assist them in carrying out programs for the preparation of undergraduate students to enter water quality control-related occupations. This program is provided for by sections 109, 110, 111, and 112 of the Clean Water Act.

Section 314(c)(2) is amended to authorize $30 million annually for grants to States for assistance in determining the eutrophic conditions of publicly-owned freshwater lakes, ways of controlling pollution in those lakes, and methods of working with Federal agencies to restore lake water quality.

Finally, $160 million per year is authorized for section 517 for carrying out provisions of the Clean Water Act for which funds have not otherwise been authorized.

House amendment

The amendment continues through Fiscal Year 1990 authorizations for a number of programs in the Water Pollution Control Act as follows:

—$22,770,000 per fiscal year for research activities and investigations on the causes and effects of water pollution;

—$3 million per fiscal year for the training of personnel who operate and maintain treatment plants;

—$1,500,000 per fiscal year for forecasting the supply of and demand for occupational categories needed in the water pollution control field;

—$75 million per fiscal year for grants to state and interstate agencies to assist in administering programs for water pollution control;

—$7 million per fiscal year for grants to educational institutions for programs to train personnel in the operation of waste pollution control facilities and to provide scholarships for students entering the field of operation and maintenance of publicly owned treatment works;

—$50 million per fiscal year for grants under section 208 for developing and implementing areawide waste treatment management planning processes;

—$50 million per fiscal year for the rural clean water program;

—$50 million per fiscal year to implement interagency agreements for the utilization of other Federal laws to assist in controlling water pollution;

—$30 million per fiscal year for the Clean Lakes Program, which provides for the restoration of the quality of water in lakes; and

—$110 million per fiscal year for general administration of the Federal Water Pollution Control Act by the Environmental Protection Agency.

Conference substitute

The conference substitute contains a modified version of the authorization levels contained in both the House and Senate bills.

In order to not break continuity in the Act, the substitute authorizes appropriation of such sums as may be necessary for fiscal years 1983 through 1985 for: research and investigation under section 104(u); grants for program administration under section 106; training grants and scholarships under section 112(c); areawide planning under section 208(f); rural clean water under section 208(j); the Clean Lakes Program under section 314, and the general program authorization under section 517. For fiscal years 1986 through 1990, the substitute authorizes appropriations in the following amounts for the following programs:

—$22.77 million per fiscal year for research activities and investigations on the cause and effects of water pollution (section 104(u)(1));

—$3 million per fiscal year for the training of personnel who operate and maintain treatment plants (section 104(u)(2));

—$1.5 million per fiscal year for forecasting the supply of, and demand for, occupational categories needed in the water pollution field (section 104(u)(3));

—$75 million per fiscal year for grants to State and interstate agencies to assist in administering programs for water pollution control (section 106(a)(2));

—$7 million per fiscal year for grants to educational institutions for programs to train personnel in the operation of water pollution control facilities and to provide scholarships for students entering the field of operation and maintenance of publicly owned treatment works (section 112(c));

—such sums as may be necessary per fiscal year for grants under section 208 for developing and implementing areawide waste treatment management planning processes (section 208(f));

—such sums as may be necessary per fiscal year for the rural clean water program (section 208(i));

—such sums as may be necessary per fiscal year for the Clean Lakes Program (section 314) which provides for the restoration of the quality of water in lakes; and

—$135 million per fiscal year for general administration of the Federal Water Pollution Control Act by the Environmental Protection Agency.

In addition, the substitute authorizes such sums as may be necessary for fiscal years 1984 through 1990 to implement interagency agreements for the utilization of other Federal laws to assist in controlling water pollution.

SMALL FLOWS CLEARINGHOUSE

Senate bill

The Senate bill amends section 104(q) of the Act to use a portion of the funds set aside for innovative and alternative (I&A) technologies, but not obligated within the 2 year deadline, to fund the Small Flows Clearinghouse. This Clearinghouse was established under the 1977 amendments to collect and disseminate information on alternatives to traditional expensive community-wide sewage treatment systems, suitable for rural settings and individual or cluster application.

At the end of the last two obligation periods, several million dollars remained unobligated and had to be reallotted. The amendment dedicates $1 million of that to funding the Clearinghouse.

House amendment

Substantially the same as the Senate bill.

Conference substitute

The conference substitute adopts the House provision.

CHESAPEAKE BAY

Senate bill

The Senate bill requires the Administrator to establish an Office of Chesapeake Bay Programs in support of a continuing State/Federal Chesapeake Bay program, at an authorization level of $3 million for the purposes of a) collecting, coordinating, and disseminating all research information concerning the environmental quality of the Bay, b) conducting research to identify the sources, quantity, and effects of sediment deposition on the Bay, and c) conducting research on the impacts of pollutant loadings on the Bay's water quality and biota.

The Administrator is authorized to make grants to those States affected by the Chesapeake Bay interstate management plan, at the request of the Governors, which commit to implement all or substantially all aspects of the plan within one year from enactment. States are required to submit a description of selected abatement actions and estimated costs for the Administrator's approval. The Federal share, with an authorization level of $10 million per year, will not exceed 55 percent of annual implementation costs. Administrative costs are limited to 10 percent of the annual Federal grant made to the State. States receiving grants must submit a progress report 18 months after receipt and biannually thereafter.

House amendment

Substantially the same as the Senate bill, but also includes a provision on Narragansett Bay.

Conference substitute

The conference substitute combines the House and Senate provisions (making no substantive changes except as to grant percentage) as follows:

—House amendment on establishment and responsibilities of Office of Chesapeake Bay programs.

—Senate bill on grants to implement management mechanisms, with House 50 percent grants in lieu of Senate's 55 percent grants.

—House amendment on State reports to E.P.A. and E.P.A. transmittal of reports, with comments, to Congress.

The conference substitute deletes the separate provision on Narragansett Bay and adds it to the list of estuaries for priority consideration by the Administrator in the National Estuary Program in new section 320 of the Act.

In review of funding proposals submitted under subsection (b)(2) of this section, the Administrator shall consider the need to provide for effective control of nonpoint sources of pollution to the Bay and should use the authority provided in subsection (b)(1) to assure that such sources are adequately addressed.

GREAT LAKES

Senate bill

The Senate bill establishes the Great Lakes National Program Office within the Environmental Protection Agency and describes the duties and responsibilities of the Program Office.

The Program Office is given three basic duties: 1) developing and implementing plans to carry out U.S. responsibilities under the Great Lakes Water Quality Agreement of 1978; 2) establishing a water quality surveillance network; and 3) serving as a liaison to the Canadian members of the International Joint Committee and the Canadian counterpart to the EPA. In addition, the office is required to develop programs for the control of nutrients, including phosphates, and toxic chemicals.

The nutrient program will incorporate any actions taken in the Great Lakes Basin under the nonpoint source pollution program which is established by section 319 of this Act. The toxic chemical program will emphasize the removal of pollutants from botton sediments.

Under the provisions of this amendment the annual budget submission of the Environmental Protection Agency to the Congress is to include a funding request for the Program Office as a separate line item.

The Administrator is required to submit a comprehensive report at the end of each fisal year detailing the achievements of the program.

The bill establishes a Great Lakes Research Office in the National Oceanic and Atmospheric Administration. The Research Office is to identify issues of which research is needed and is to compile an inventory of on-going research on those questions. The Research Office is to develop a comprehensive data base for the Great Lakes System and may conduct research and monitoring activities.

For each fiscal year the Program Office and the Research Office are to prepare a joint research program for the following fiscal year. The head of each Federal department, agency or instrumentality which is engaged in programs or activities which may have an impact on the quality of the Great Lakes shall submit an annual report to the Administrator with respect to those activities and their effect on compliance with the Great Lakes Water Quality Agreement.

The bill authorizes $50 billion over a five-year period to carry out the purposes of this section, 50% of which is to be used for demonstrating methods to control toxic pollution, 7% of which is for nutrient monitoring and 30% of which is for the Research Office.

House amendment

The House amendment includes a statement of purpose for this section which is to achieve the goals embodied in the Great Lakes Water Quality Agreement on 1978. The amendment establishes the Great Lakes International Coordination Office. The Office is to: carry out the Great Lakes Water Quality Agreement of 1978; conduct toxic pollutant control demonstration programs at five specific sites; coordinate the activities of the Agency related to the Great Lakes; coordinate actions of other Federal departments and agencies related to the Great Lakes; establish a system-wide surveillance network; and serve as a liaison to Canadian members of the International Joint Commission.

The annual budget submission of the Agency to Congress is to include a specific line item for the Office. The Administrator is to submit annual assessments and reports on progress in meeting the Great Lakes Water Quality Agreement of 1978.

The amendment establishes a Great Lakes Research Office in the National Oceanic and Atmospheric Administration. The Research Office is to identify issues on which research is needed and is to compile an inventory of on-going research on those questions. The Research Office is to develop a comprehensive date base for the Great Lakes System and may conduct research and monitoring activities.

For each fiscal year the Coordination Office within EPA and the Research Office at NOAA are to prepare a joint research program.

The amendment authorizes $52 million over a five-year period for the EPA Coordination Office of which $17.5 million is to be used to carry out the toxic pollutant control demonstration projects. In addition $10 million is authorized to carry out the existing Great Lakes authorities of the Clean Water Act in fiscal year 1986 and $16 million is authorized for the activities of the Research Office over a five-year period.

Conference substitute

The conference substitute contains a statement of purpose which is to achieve the goals embodied in the Great Lakes Water Quality Agreement of 1978. It establishes the Great Lakes National Program Office within the Environmental Protection Agency and specifies the duties and responsibilities of the Program Office.

The Program Office is to: develop and implement action plans to carry out the duties of the United States under the Great Lakes Water Quality Agreement of 1978; establish a system-wide surveillance network; coordinate the activities of the Environmental Protection Agency with respect to the Great Lakes; to work with other Federal agencies to achieve the objectives of the Agreement.

The Program Office is to develop a five-year plan for reducing the amount of nutrients that enter into the Great Lakes and shall incorporate into that plan management programs for nonpoint sources of pollution developed pursuant to section 319 of this Act.

The Program Office is to conduct a five-year study of methods to remove toxic pollutants from the Great Lakes with emphasis on the removal of toxic pollutants from bottom sediments. Demonstration projects at Saginaw Bay, Michigan; Sheboygan Harbor, Wisconsin; Grand Calumet River, Indiana; Ashtabula River, Ohio; and Buffalo River, New York are to receive high priority under this program.

The annual budget submission of the Agency to the Congress is to include a line item for the Great Lakes Program Office. At the end of each fiscal year the Administrator is to submit to the Congress a comprehensive report on the achievements of the Program Office during the preceding fiscal year.

The conference substitute establishes a Great Lakes Research Office in the National Oceanic and Atmospheric Administration.

The Research Office is to identify issues with respect to Great Lakes water quality on which research is needed and is to compile an inventory of on-going research on those questions. The Research Office is to develop a comprehensive data base for the Great Lakes System and may conduct research and monitoring activities.

For each fiscal year the Program Office and the Research Office are to prepare a joint research program. The head of each Federal department, agency or instrumentality which is engaged in programs or activities which may have an impact on the quality of the Great Lakes shall submit an annual report to the Administrator of the Environmental Protection Agency with respect to those activities and their effect on compliance with the Great Lakes Water Quality Agreement of 1978.

The conference substitute provides an authorization to the Administrator of the Environmental Protection Agency of $11,000,000 for each of the fiscal years 1987 through 1991 to carry out the provisions of this section. Of the amounts appropriated, 40 percent is to be used by the Program Office to demonstrate the control and removal of toxic pollutants; 7 percent is to be used for nutrient monitoring; and 30 percent is to be transferred to the Research Office for its programs.

RESEARCH ON EFFECTS OF POLLUTANTS

Senate bill

No comparable provision.

House amendment

The House amendment directs EPA, when establishing national programs to reduce and eliminate pollution, to conduct research on the harmful effects on perons caused by pollutants in water. Special emphasis is to be placed on the effects of bioaccumulation of pollutants in aquatic species. The study will be carried out in conjunction with the Fish and Wildlife Service, the National Oceanic and Atmospheric Administration and other Federal and State agencies.

Conference substitute

The conference substitute adopts the House provision requiring the Administrator to undertake research on the harmful effects of pollutants in water but deletes the specific authorization of appropriations to carry out the purposes of this section. Research required by this section should be undertaken using funds made available to carry out section 104 of the Act. In conducting this research, the Administrator should address the health impacts of waterborne pollutants on both human and aquatic species.

TIME LIMIT ON RESOLVING CERTAIN DISPUTES

Senate bill

No comparable provision.

House amendment

This provision states that in any case in which a dispute arises with respect to the awarding of a contract for construction of treatment works by a grantee of funds under this title and a party to such dispute files an appeal with the Administrator for resolution of the dispute, the Administrator shall make a final decision on the appeal within 60 days of the filing of such appeal.

Conference substitute

The conference substitute adopts the House provision, except that the time limit for final decision is 90 days after the filing of the appeal.

FEDERAL SHARE

Senate bill

No comparable provision.

House amendment

The House amendment amends section 202(a)(1) of the Act by adding projects to address water quality problems due to impacts of discharges from combines storm water and sanitary sewer overflows. This is the subsection which provides that projects which have received a step three construction grant before October 1, 1984, will continue to receive a Federal grant of 75 percent until completion.

The House amendment provides that, in the case of any project for which an application for a grant has been made before October 1, 1984, and which project is under judicial injunction on such date prohibiting its construction, the project shall still be eligible for grants of 75 percent of the construction cost.

The House amendment also provides that in the case of the Wyoming Valley sanitary project required by Judicial order, the Federal share shall be 75 percent of the cost of construction.

The House amendment provides that, in addition, the Administrator is authorized to make a grant to fund all the costs of the modification or replacement of biodisc equipment (rotating biological contactors) in any publicly owned treatment works if the Administrator finds that the equipment has not met design performance specifications, unless the failure is attributable to negligence on the part of any person, and if the failure has significantly increased capital or operating and maintenance expenditures.

The House amendment provides that the activated bio-filter feature for treatment works of the City of Little Falls, Minnesota, shall be deemed to be an innovative wastewater process and technique and shall be eligible for the increased grants which the Act makes available for innovative technology projects.

Federal assistance made available by the Farmers Home Administration is authorized to be used to provide the non-Federal share of construction projects costs.

CONFERENCE SUBSTITUTE

The conference substitute adopts the House amendment as modified. Subsection (a) of the House amendment is deleted. The conference substitute adopts a modification of a Senate provision limiting the eligibility of facilities to receive 75 percent Federal grants to those grants made pursuant to a State obligation occurring before October 1, 1990. The conference substitute also provides that a project for wastewater treatment at Altoona, Pennsylvania, shall be eligible for 75 percent grants.

Subsection (f) clarifies that assistance made available to communities through the Farmer's Home Administration may be used to provide the non-Federal share of the cost of a construction project carried out under section 201 of this Act. A number of projects have proceeded with Farmer's Home Administration funding of the non-Federal share. Subsection (f) is intended to simply clarify that such practices have been and continue to be acceptable. Adoption of this provision should not be interpreted as implying that, prior to this action, such practices were not acceptable.

ELIGIBILITIES AFTER 1990

Senate bill

The bill amends three sections of the Act to provide consistency between programmatic aspects of title II and the funding phaseout. The bill amends section 202(a)(1) of the Act to prohibit grandfathering of the 75 percent Federal share for grants for phased or segmented projects that receive a grant award on or after October 1, 1990. Section 204(c) of the Act is amended to prohibit grandfathering of reserve capacity for phased or segmented projects that receive a grant award on or after October 1, 1990. Section 205(g)(1) of the Act is amended to extend the Administrator's authority to reserve four percent of the State's allotment through fiscal year 1994 for the purpose of making grants to States for the management of the delegated construction grant program. This is to assure that management funds will be available for any project constructed within the legal obligation period after 1990.

House amendment

The House amendment also amends section 205(g)(1) of the act, but only extends the reservation for costs of administration until 1990.

Conference substitute

The conference substitute adopts the Senate bill, as modified, among other things: provide that 75 percent Federal grants will no longer be available for any grant made pursuant to a State obligation made after September 30, 1990, and to delete the reserve capacity prohibition after October 1, 1990, for certain phased or segmented projects.

AGREEMENT ON ELIGIBLE COSTS; GRANTEE CERTIFICATION OF TREATMENT PROCESS

Senate bill

No comparable provision.

House amendment

Section 203(a) of the Federal Water Pollution Control Act requires each applicant for a grant to submit to the Administrator for his approval plans, specifications and estimates for each proposed project for the construction of treatment works for which a grant application is made, the House amendment amends this provision to provide that before taking final action on such plans, specifications and estimates, the Administrator must first enter into an agreement with the applicant which establishes and specifies to the extent practicable which items of the proposed project are eligible for Federal payments under this section. Once this agreement has been entered into, the Administrator may not refuse to make payments for the Federal share of those reasonable costs of any item specified in the agreement which are incurred on the project.

The House amendment also provides that the approval of construction plans and specifications by the Administrator under Section 203(a) shall not include a determination or approval of the treatment work's unit processes, or the configuration of the treatment work's unit processes, which constitute the treatment technology. In addition, the Administrator is not to approve plans, specifications or estimates for a project unless the applicant certifies that the proposed unit processes and treatment technology are capable of meeting the effluent limitations for which they are designed.

Conference substitute

The conference substitute basically adopts the House language, but adds language which provides that the requirements of this section are only applicable to final action on plans, specifications, and estimates submitted sixty days after enactment of the Water Quality Act of 1986. In addition, the conference substitute deletes language specifying that approvals by the Administrator under this section shall not include a determination or approval of the treatment works unit process or the configuration of the treatment work's unit process, which constitute the treatment technology. Also deleted is language prohibiting the Administrator from approving plans, specifications, and estimates under section 203 of the Act unless the applicant certifies the ability of the process or technology to meet the applicable effluent limitations.

DESIGN-BUILD PROJECTS

Senate bill

Section 203 of the Act is amended to provide that communities applying for construction grant assistance may enter into an agreement with the Administrator to erect treatment works under alternate "design-build" grant management procedures. This alternate management procedure allows applicants to contract for both the design and construction of treatment works, thereby avoiding several costly review and bidding requirements.

The agreement between the applicant and Administrator provides for a specified Federal contribution, start and end dates for construction, effective project management procedures, and a bond to assure performance.

Design-build project management procedures are limited to those projects which have a total cost of less than $8 million and are specified, simple treatment systems (e.g., aerated lagoons). In addition, not more than 25 percent of a State grant allocation may be used under this alternate management procedure.

House amendment

The House amendment authorizes grants for turnkey provisions for construction of treatment works which have an estimated total cost of $8 million or less. E.P.A. and the applicant must enter into an agreement specifying maximum Federal contribution, completion dates, and the like. The Federal share is to be deposited into an interest-bearing account and earned interest is available for payments to the grantee. The House provisions allows use of "turnkey" management for any type of treatment system.

Conference substitute

The conference substitute adopts a combination of Senate and House bills. The interest-bearing account provision of the House amendment is deleted. The House provision limiting use of more than 20 percent of the amount allotted to a State for grants under this subsection is adopted. And, the Senate provision limiting use of the design/build approach to specified, simple treatment systems is adopted.

The provision in the conference substitute provides that the agreement between the Administrator and applicant must include an amount agreed to as the maximum contribution to a project. This amount is to be based on a determination of the Federally eligible costs of the project at the applicable Federal share under section 202 of the Act and on a competitively bid document of basic design data and applicable standard construction specifications. Because design-build management is limited to specified, conventional treatment systems, the facility plan is expected to provide sufficient, basic information to assure that bids reflect comparable design and construction standards. The applicant, with the assistance of the State and the Administrator, may supplement the facility plan with additional basic design data and construction specifications prior to bidding if necessary.

It is expected that applicants will not need to hire professional services to upgrade a facility plan to a bid document. However, if the Administrator or State determines that additional professional services are needed in order to prepare a bid document, costs of such services are to be eligible under section 201(l) of this Act. The Administrator may decline to agree to an amount of Federal contribution and decline to enter an agreement under this section if he finds that the bid document is not adequate to assure that bids reflect comparable design and construction standards.

GRANT CONDITIONS—USER CHARGES ON LOW-INCOME RESIDENTIAL USERS

Senate bill

No comparable provision.

House amendment

The House amendment amends section 204(a)(1) of the Federal Water Pollution Control Act to require the Administrator, before approving sewage treatment construction grants for any project, to determine that either any required areawide waste treatment management plan under section 208 is being implemented for such area and the proposed treatment works are included in such plan or that reasonable process toward implementation is being made.

It also amends section 204(a)(2) of the Act and requries similar conformance with plans and reports in sections 303(e) and 305(b) of the Act.

These amendments made shall take effect two years after the date of enactment of this legislation.

Section 204(b)(1) of the Federal Water Pollution Control Act provides that, notwithstanding any other provisions of the Act, the Administrator shall not approve any grant for any treatment works unless he shall first have determined that the applicant has adopted or will adopt a system of charges to assure that each recipient of waste treatment services within the applicant's jurisdiction will pay its proportionate share of the costs of operation and maintenance of any waste treatment services provided by the applicant.

The House Amendment amends this by providing that a system of user charges which imposes a lower charge for low-income residential users, as defined by the Administrator, shall be deemed to be a user charge system meeting the requirements of section 204, if the Administrator determines that the system was adopted after public notice and hearing. Any additional user charges required of other users of the waste treatment services resulting from application of this subsection are to be determined in accordance with the proportionality requirements of section 204.

Conference substitute

The conference substitute adopts the House provision. The inclusion of subsection (d), providing for an effective date beginning two years after the date of enactment for new provisions concerning areawide plans and continuing planning processes, is not intended to affect or override any related provision of this Act.

ALLOTMENT OF CONSTRUCTION GRANT FUNDS

Senate bill

The bill amends section 205(c) of the Act to establish an allotment formula for distributing construction grant funds and State revolving fund capitalization grants among States for the fiscal years 1986 through 1990. The formula in existing law expires with the fiscal year 1985 authorization. The allotment formula in the bill states as a 6-place decimal fraction the share of the total appropriation each State will receive in each of the fiscal years for which it is applicable. The first table in the bill contains the allotment share for each State for fiscal years 1986–1988. Table 2 is for fiscal years 1989–1990.

House amendment

The House amendment extends the existing allotment formula through fiscal year 1990.

Conference substitute

The conference substitute adopts a new formula for distributing construction grant funds and the State revolving loan fund capitalization grants among States for fiscal years 1987 through 1990. The allotment formula for fiscal year 1986 is the same as under current law.

RURAL SET-ASIDE

Senate bill

The Senate bill extended the rural set-aside of current law.

House amendment

The House amendment amends section 205(h) of the Act which relates to alternatives to conventional sewage treatment works in rural areas by changing the four percent mandatory set-aside to provide that it shall be a minimum of four percent, but shall be increased to as much as seven and one-half percent at the request of the Governor. Also, the authorization of a discretionary set-aside for other States of up to four percent of the request of the Governor is changed to authorize a set-aside of up to seven and one-half percent.

Conference substitute

The conference agreement adopts the House amendmemt.

INNOVATIVE AND ALTERNATIVE PROJECTS

Senate bill

The bill amends section 205(i) of the Act to extend through fiscal year 1990 the requirement that a percentage of allotted funds be reserved to be used to increase the Federal share for innovative and alternative projects.

House amendment

The amendment amends section 205(i) to extend the set aside for innovative and alternative processes until 1990.

Conference substitute

The conference substitute combines the House and Senate provisions, including technical amendments included in the Senate provision.

REGIONAL ORGANIZATION FUNDING

Senate bill

No comparable provision.

House amendment

The House amendment contains a provision requiring States to allocate 50 percent of the funds received in each year pursuant to the provisions of section 205(j) of the Act and with respect to water quality planning for use by regional and interstate comprehensive public planning organizations. An exception to the requirements of the section is made if the Administrator, in consultation with the affected Governor, determines that such an allocation will not significantly assist in encouraging participation by such entities.

Conference substitute

The conference substitute adopts the House provision with modifications. The States are to allocate at least 40 percent of the 205(j) planning funds for use by regional comprehensive public planning organizations and appropriate interstate planning organizations. The Governor, after receiving approval from the Administrator, may allocate a lesser amount in any fiscal year, but only where allocation of 40 percent will not result in significant participation by such entities in the water quality planning activities conducted pursuant to this Act.

This provision establishes a minimum allocation and the conferees encourage States to provide a larger percentage of funds to regional and interstate organizations where a higher allocation will encourage participation by such entities in water quality planning.

MARINE CSO'S AND ESTUARIES

Senate bill

The Senate bill amends section 205 of the Act to provide for reservation of not to exceed 1 percent on the construction grant funds for fiscal years 1986–1988 and 1½ percent for fiscal years 1989–1990.

Two-thirds of the reserve, or one percent of the construction grants appropriation, shall be available for marine CSO correction where lower levels of water quality exist in marine bays and estuaries as a result of discharges by marine CSO's. The remaining one third of the reserve, or one half of one percent of the construction grants appropriation, shall be made available to supplement the funding of the newly established National Estuary Program pursuant to section 320 of the Act. The total reserve authorized by this provision is subject to the two year period of availability for obligation as provided for in section 205(d).

House amendment

Amends section 201(g)(1) of the Federal Water Pollution Control Act by adding projects to address water quality problems due to impacts of discharges from combined storm water and sanitary sewer overflows to the list of categories which are eligible for Federal grant assistance.

Conference substitute

The conference substitute adopts the Senate provision, except that the reservation is 1% for fiscal years 1987-1988 and 1.5% for 1989-1990. The conference substitute also treats certain portions of tributaries draining into marine bays and estuaries as marine bays and estuaries.

CONSTRUCTION GRANT AUTHORIZATION

Senate bill

The bill amends section 207 of the Clean Water Act to authorize $2.4 billion annually for the Title II construction grants program for fiscal years 1986 through 1988, and not to exceed $1.2 billion annually for fiscal years 1989 and 1990.

The bill amends section 205(e) of the Clean Water Act (providing a minimum allotment of ½ percent to each State, but not more than ⅓ percent in the aggregate for the territories) by extending authorization dates through 1994.

House amendment

The House amendment extends the authorization level for the Construction Grants Program of $2.4 billion per fiscal year through fiscal year 1990 and extends the Act through 1990.

The House amendment adds fiscal years 1986 through 1990 to section 205(e) and changes the maximum amount available to Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, and the Trust Territories from one-third of one percent to two-thirds of one percent in order to better meet their water quality needs.

Conference substitute

The conference substitute is the same as the Senate bill for construction grants authorizations.

REPORT TO CONGRESS

Senate bill

The bill amends section 516 of the Act to require the Administrator to submit a report to Congress on the financial status and operations of the Water Pollution Control Revolving Funds.

House amendment

The House amendment contains a similar provision.

Conference substitute

The conference substitute adopts a comparable provision, which is included in the State Water Pollution Control Revolving Fund section.

STATE WATER POLLUTION CONTROL REVOLVING FUNDS

Senate bill

The bill adds a new title VI to the Clean Water Act to provide for the establishment of State-administered Water Pollution Control Revolving Funds (SRFs). The creation of SRFs through a program of capitalization grants to States will provide a feasible transition to State and local financing of municipal wastewater treatment facilities.

To complete the remaining core municipal wastewater treatment needs, funds must be dedicated as quickly as possible. This policy is implemented through a provision which requires that binding loan agreements for the use of Federal funds be completed within one year of receipt of such funds, and that the projects financed with such loans comply with the eligibility and other requirements that are applicable to grant-funded projects under title II. In addition to meeting title II eligibility requirements, a State must also commit to first using its revolving fund resources in financing the construction of municipal treatment works needed to meet the 1988 municipal compliance deadline.

The bill authorizes $8.4 billion in the period beginning fiscal year 1989 and ending fiscal year 1994 and provides that appropriations from the authorized amounts be allotted among the States in accordance with the same allocation formula that is used to allot title II construction grant funds. Funds allotted under a grant award in a given fiscal year must be made by the end of that fiscal year. Funds allotted to a State that have not been awarded by the end of the fiscal year that such funds became available will be reallotted among the States that have already established acceptable State Revolving Funds.

Under the Senate bill States are required to enter into agreements with the Administrator prior to receiving the award of a capitalization grant.

A State must establish (through statute or other legal mechanism creating a legal entity of the State with the powers and limitations prescribed in this bill) a revolving fund dedicated solely to such purposes. The State must also negotiate a schedule of payments as described above. Prior to receiving payments, a State must make a 15 percent matching contribution to the revolving funds. This section also enables a State to meet the 15 percent matching requirement by depositing State monies in the dedicated revolving fund during fiscal years prior to the fiscal year that Federal grant funds are received.

All funds available to the revolving fund must be committed in an expeditious and timely manner; funds provided by capitalization grants (or an amount equal to such funds), however, must be made available to loan recipients in binding loan agreements within one year of receipt of the Federal funds by the State Revolving Fund. Binding loan commitments entered into within 12 months of receipt of a Federal grant payment may also be greater than 100 percent of the amount of the Federal grant payment. Any treatment project that is financed with funds directly made available by capitalization grants, prior to fiscal year 1985, will have to meet the same requirements that the project would have had to have met if it had received a grant under Title II.

A State must further agree to first use funds available in the State Revolving Fund to assure maintenance of progress in completing municipal treatment works needed to comply with enforceable requirements of the Act, including the 1988 municipal compliance deadline.

The Senate bill provides that a State must establish a Water Pollution Control Revolving Fund, which must be administered by an instrumentality of the State, to be eligible for an award of a capitalization grant. The State must provide the SRF with powers and impose limitations on the Revolving Fund; some of the powers and limitations are specified in the remaining subsections of section 603.

The bill also provides that SRF's be maintained and credited with repayments so that the fund balance shall be available in perpetuity. The Revolving Fund is dedicated for only two purposes: one, to provide financial assistance for the construction of publicly owned treatment works as defined in Section 212(2) of the Act; and two, to provide financial assistance (except from funds made directly available to the SRF in the capitalization grant) for the implementation of projects and programs established under sections 319 (Nonpoint Source Pollution Control Program) and 320 (National Estuarine Program). In both cases, the financial assistance must be for capital projects that are capable of enabling the State to establish a revenue stream to support repayment of the financial assistance.

The State Revolving Fund may buy or refinance debt obligations of local communities which were incurred for construction of publicly owned treatment works after March 7, 1985. The purpose of this provision is to encourage municipalities to proceed with construction with their own means of interim financing in advance of availability of a loan from the revolving fund, by offering municipalities the prospect of project refinancing at reasonably better financial terms at a later date.

The bill requires fiscal controls and accounting procedures be established for SRF's. The State is required to establish fiscal controls and procedures to assure proper accounting for payment periods, disbursements, and fund balances. All funds must be accounted for, including capitalization grants, State matching grant, and loan repayments. The Administrator shall conduct, or the State shall have an entity independent of the State conduct, an audit, not less than annually, of the operations of each SRF.

The bill requires each State to prepare a plan for the intended uses of amounts available in the Revolving Fund. The intended use plan may be adopted from the priority systems and lists developed under section 216 of the Act for construction grant projects. The State may also consider other information on the extent and nature of water pollution problems. The State must provide an opportunity for public comment on the use of the funds.

The bill requires the State to prepare a report to the Administrator describing how the State implemented its intended use plan prepared pursuant to subsection (c). This report is to be prepared annually and the first report must be provided in the first fiscal year after receipt of payments. The report shall include identification of loan recipients, amounts, and terms.

The bill requires the Administrator to conduct an annual review of the intended use plan and the annual report to determine whether the State is complying with the requirements of this Title.

Subsection (e) also requires that a State or loan recipient make records available to the Administrator, after reasonable notice, to help in making a determination.

The bill amends the Clean Water Act by adding a new subsection (m) to section 205. This section would provide States with the option of using all or a portion of their funds available for obligation under Title II for capitalization grants for State Revolving Funds under Title VI.

House amendment

The House amendment establishes a program for grants to states for establishment of water pollution control revolving funds.

Subsection (a) of new section 220 directs the Administrator to make a grant to each state for the purpose of establishing a Water Pollution Control Revolving Fund for providing assistance to municipalities and intermunicipal and interstate agencies for construction of treatment works as defined in section 212 of the Act which are publicly owned.

Before receiving a grant, the state must first deposit in the fund an amount equal to 20 percent of the amount allotted to the State for a fiscal year. In addition, the Governor may deposit not to exceed twenty percent of the amount allotted to the state under section 205 (construction grant funds), if the state has deposited from non-Federal funds an amount equal to twenty percent of the section 205 funds to be deposited.

Each state must submit annually to the Administrator a certification that upon completion of any project for treatment works for which financial assistance is made available under this section, discharges from such treatment works will meet all applicable requirements necessary to achieve applicable state and Federal water quality standards. The state must further certify that it will comply with all provisions of section 16.

A state may use amounts in the Revolving Fund only to make loans, loan guarantees, payments to reduce interest on loans and loan guarantees, bond interest subsidies, and bond guarantees to municipalities and intermunicipal and interstate agencies, or purchase of insurance for obligations. A state may also use the fund as security for revenue bonds issued to finance construction of treatment works.

Each state shall establish a Water Pollution Control Revolving Fund to provide assistance under this section. The state must deposit in the revolving fund, any Federal funds allotted to the state under this section any amounts received by the state for repayment of loans made by the state with amounts in the fund, any amounts required to be deposited in the fund state 20 percent share and up to 20 percent of construction grant funds and any additional funds which the state wishes to deposit in the fund.

A state may provide assistance under this section to a municipality or intermunicipal or interstate agency with respect to the non-Federal share of the costs of a project for which such municipality or agency is receiving assistance from the Administrator under any other section of Title II.

A state may provide assistance from a revolving fund to a municipality or intermunicipal or interstate agency for the non-Federal share of the costs of a project which is receiving assistance under the construction grants program.

A state may only make a loan from the revolving fund if the recipient establishes a dedicated source of revenue for repayment of the loan.

A state may provide financial assistance from the revolving fund only for projects which are on the state priority list. Assistance may be provided regardless of the rank of a project on the priority list.

Each state must annually make a full and complete report to the Administrator concerning the use of Federal funds made available under this section in such manner as the Administrator shall prescribe. Also, at least annually, the Administrator shall conduct, or require each state to have independently conducted, reviews and audits as may be deemed necessary and appropriate by the Administrator to carry our the objectives of this section. Audits of the use of Federal funds shall be conducted in accordance with the auditing procedures of the General Accounting Office.

The provisions of Title II of the Federal Water Pollution Control Act shall not apply to financial assistance under new section 220 except to the extent specifically provided in new section 220.

There is authorized to be appropriated to carry out this section not to exceed $600,000,000 per fiscal year for each of the fiscal years 1986 through 1990, $2,400,000,000 for fiscal year 1991, $1,800,000,000 for fiscal year 1992, $1,200,000,000 for fiscal year 1993, and $600,000,000 for fiscal year 1994. These funds are to be allotted by the Administrator in accordance with the same table which provides for allotment of Construction Grant funds. Sums allotted to a state for a fiscal year shall remain available for a grant to such state for the fiscal year for which authorized and for the following two fiscal years as well. Any funds granted to a state for a fiscal year under this section which are not utilized by such state for any of the purposes of this section during such fiscal years shall be repaid to the Administrator for reallotment among the other states.

Conference substitute

The conference substitute combines both House and Senate bills.

The provision provides that the Administrator and States may enter into capitalization grant agreements under this title. States must agree to accept payments under a schedule to be developed jointly with the Administrator, must agree to provide a 20% match of Federal funds, and must agree to make binding commitments for assistance in an amount equal to 120% of the amount of the grant payment within one year. Monies contributed by a State to match Federal capitalization grants under section 602(b)(3) are to be cash and not in-kind.

The schedule under which payments are to be made by the Administrator to the State shall be developed jointly by the State and the Administrator. Such schedule shall be based on the State intended use plan and shall provide that payments be made as expeditiously as possible, consistent with such plan. Payments to a State must be made not later than the earlier of eight quarters after the date funds were obligated by the State or 12 quarters after the date such funds were allotted to the State.

In addition, the State must agree to assure, as part of the intended use plan submitted annually, that all Federal and State funds provided to the SRF will be committed in an expeditious and timely manner. This provision reinforces the requirement that States make binding commitments for funds within one year of any given payment to the fund.

Section 602(b)(5) refers to all Federal funds, in the form of capitalization grants, and all other funds in the SRF as a result of those capitalization grants, including repayments of loans originating from those grants and State funds contributed as the required match for those grants, and funds deposited in the fund under section 205(m). The State must use these funds first to assure that treatment works maintain progress toward compliance with the enforceable deadlines, goals and requirements of this Act, including the municipal compliance deadline of July 1, 1988, or are on enforceable schedules for compliance after that date.

Progress toward compliance with enforceable deadlines, goals and requirements of the Act, in the case of treatment works that are not voluntarily on a schedule to achieve compliance, may be assured through a funding commitment or through establishment of an enforceable compliance schedule. Thus, the requirement of section 602(b)(5) is met if treatment works in a State are on an enforceable schedule to achieve compliance with uniform secondary treatment requirements of the Act, whether or not there is a commitment to fund such treatment works from a State revolving loan fund or with a grant under Title II of this Act. Governors of each State shall make the determination of progress toward compliance required under this subsection and the Administrator shall oversee such determinations.

Once a State has met the requirement of paragraph (B), funds from the SRF may be used for any other treatment works as defined by section 212 of the Act (subject to the restrictions of section 602(b)(6)), programs and projects identified under ~~the~~ Nonpoint Source Pollution Control Program (section 319), ~~or~~ programs and projects identified under the National Estuaries Program (section 320). This provision is intended to allow States the flexibility to utilize funds from the SRF to support a variety of measures that the State determines are needed to achieve water quality goals.

Further, a State must demonstrate that any treatment works which is constructed in whole or in part prior to fiscal year 1995 with funds directly made available by capitalization grants under this title or section 205(m), will meet the requirements of the sections 201(b), 201(g)(1), 201(g)(2), 201(g)(3), 201(g)(5), 201(g)(6), 201(n)(1), 201(o), 204(a)(1), 204(a)(2), 204(b)(1), 204(d)(2), 211, 218, 511(c)(1) and 513. This restriction on the use of Federal capitalization grant funds does not apply to funds contributed by the State in accord with section 602(b)(3), monies repaid to the fund, or other monies. State Governors shall assure that the requirements of this subsection are met.

The restrictions on the use of capitalization grant funds used directly to support treatment works are intended to assure that Federal funds are used in an effective and efficient manner. However, nothing in the conference substitute limits or otherwise affects the authority a Governor has by virtue of section 201(g)(1) of the Act to reserve 20 percent of the State's allotment for otherwise ineligible assistance.

Section 201(b) requires that projects apply best practicable waste treatment technology.

Section 201(g)(1) limits assistance to projects for secondary treatment or more stringent treatment, or any cost effective alternative thereto, new interceptors and appurtenances, and infiltration-inflow correction. This subsection also provides that State Governors may reserve 20 percent of a State's allotment for projects which meet the definition of treatment works in section 212(2) but are otherwise not eligible for assistance under this subsection. This Governor's reserve is intended to apply to funds made available under this title.

Section 201(g)(2) requires that alternative waste treatment techniques be considered in project design.

Section 201(g)(3) requires the applicant to show that the related sewer collection system is not subject to excessive infiltration.

Section 201(g)(5) requires that applicants study innovative and alternative treatment technologies and take into account opportunities to make more efficient use of energy and resources.

Section 201(g)(6) requires that the applicant analyze the potential recreation and open space opportunities in the planning of the proposed facility.

Section 201(n)(1) provides that funds under section 205 may be used to address water quality problems due to discharges of combined stormwater and sanitary sewer overflows, which are not otherwise eligible, if such discharges are a major priority in a State. This provision is intended to apply to use of funds under title VI as well as section 205.

Section 201(o) calls on the Administrator to encourage and assist communities in development of capital financing plans.

Section 204(a) (1) and (2) require that treatment works projects be included in plans developed under section 208 and 303(e).

Section 204(b)(1) requires communities to develop user charge systems and to have the legal, institutional, managerial, and financial capability to construct, operate and maintain the treatment works.

Section 204(d)(2) requires that, one year after the date of construction, the owner/operator of the treatment works must certify that the facility meets design specifications and effluent limitations included in its permit.

Section 211 provides that collectors are not eligible unless the collector is needed to assure the total integrity of the treatment works or that adequate capacity exists at the facility.

Section 218 assures that treatment systems are cost effective and requires that projects of over $10 million include a value-engineering review.

Section 511(c)(1) applies the National Environmental Policy Act to treatment works projects.

Section 513 applies Davis-Bacon labor wage provisions to treatment works construction.

As noted above, the fund may be used to assist publicly owned treatment works as defined by section 212 of the act, the development and implementation of a nonpoint source management program established under section 319 and development and implementation of an estuary program under section 320. This provision is intended to provide a basis for funding of projects to control nonpoint pollution and pollution to estuaries where such projects are conducted by municipalities, a State, other public organizations, or individual. All fund management provisions of this title apply to such projects.

The definition of projects eligible for funding under the loan program includes publicly owned treatment works as defined by section 212 of the Act. This definition includes planning and design as defined in section 212(1), treatment works as defined in section 212(2) and replacement as defined in section 212(3). Each of these aspects of treatment works is eligible for assistance under this title.

Some municipalities have developed, or may develop in the future, innovative financing arrangements involving private ownership and operation of portions of municipal sewage treatment systems. It is not the intent of this section to prohibit or discourage States from using their revolving loan funds to support the publicly owned portion of such treatment systems.

Funds under this title may be used to make loans as provided under section 603(d)(1), but are not to be used to provide direct grants. If as a result of audits under this section, the Administrator finds a consistent and substantial failure to repay loans, he may take corrective action as provided under this title.

Section 603(d)(2) provides that loan funds may be used to refinance debt obligations of municipalities for eligible projects, where such obligations were incurred after March 7, 1985.

Section 603(n) limits the authority of section 603(d)(2) by providing that funds may not be used to make direct loans to support the non-Federal share of a project receiving assistance under title II of this Act. This limitation on direct loan assistance does not include ancillary assistance to the municipality which results in a lowering of costs of the obligation (e.g. guarantee of the local share obligation, insurance of the obligation, etc.). However, such indirect assistance to support the costs of the non-Federal share shall only be available to municipalities which face severe financial constraints, as determined by the State Governor.

This section provides that wastewater treatment projects, but not other eligible projects, assisted with funds in the loan fund are required to be on the State priority list. Such assistance may be provided without regard to rank of the project on the list.

The provision provides for the allotment of certain funds to States, reservation of funds for planning, and the reallotment of unobligated funds. Funds reserved for water quality management planning under this provision are to be used by whichever agency or agencies in the State conduct environmental programs, rather than an agency established to manage the financing of projects with funds provided under this title.

The provision contains requirements for audits, fiscal controls, and corrective action by the Administrator where needed.

Authorizations are provided as in the Senate bill. In addition, the conference substitute allows transfer of funds under title II to a loan fund established under this title. Such transfers may not exceed 50% of grant funds in FY 1987 and 75% of grant funds in 1988. Such title II funds are to be treated as capitalization grants when transferred to the fund.

The provision provides for reports to Congress on the progress and status of State loan funds.

Funds available to States under section 205(g) for the management of construction grant programs under title II may be used to assist the development of revolving loan funds under this title.

IMPROVEMENT PROJECTS

Senate bill

No comparable provision.

House amendment

The House amendment provides that the Administrator shall make a grant of $3,000,000 from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of California for fiscal year 1986 to the city of Avalon, California, for improvements to the publicly owned treatment works of such city.

Subsection (b) provides that the Administrator shall make grants from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of Pennsylvania for fiscal year 1986—

(1) to Walker Township, Pennsylvania, for developing a collector system and connecting its wastewater treatment system into the Huntingdon Borough, Pennsylvania, sewage treatment plant, and

(2) to Smithfield Township, Pennsylvania, for rehabilitating and extending its collector system.

The House amendment provides that notwithstanding section 201(g)(1) of the Federal Water Pollution Control Act or any other provision of law, the Administrator shall make a grant of $250,000 from funds allotted under section 205 of such Act to the State of Kentucky for fiscal year 1986 to the city of Taylor Mill, Kentucky, for the repair and reconstruction, as necessary, of the publicly owned treatment works of such city.

The House amendment provides that the Administrator shall make a grant of $27,000,000 from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of California for fiscal years beginning after September 30, 1985, to the city of Watsonville, California, for improvements to the wastewater treatment and disposal facilities of such city.

The House amendment directs the Administrator to make a grant from funds allotted to the State of New Jersey to the Wanaque Valley Regional Sewerage Authority for the construction of treatment works with a total capacity of 1,050,000 gallons per day.

The House amendment provides for a grant to the village of Lena, IL, from funds allotted to Illinois, for the construction of a replacement moving bed filter press for the city's treatment works.

The House amendment directs the Commonwealth of Pennsylvania from the sums allocated to it under this Act, give first priority to the Wyoming Valley Sanitary Authority Secondary Treatment project mandated under federal court order, regardless of the date of start of construction made pursuant to the court order.

Conference substitute

The conference agreement adopts the House amendment relating to Avalon, California; adopts the House amendment, as modified, relating to Walker and Smithfield Townships, Pennsylvania; adopts the House amendment relating to Taylor Mill, Kentucky; deletes the House amendment relating to Watsonville, California; adopts the House amendment as modified, relating to Nevada County, California; adopts the House amendment, as modified relating to Wanaque, New Jersey; adopts the House amendment relating to Lena, Illinois; and, adopts the House amendment relating to the Wyoming Valley Sanitary Authority Secondary Treatment project, modified to require a funding priority, and modified to include funding priority for the Altoona, Pennsylvania, wastewater treatment project.

The Federal and non-Federal shares for the Avalon treatment works will be determined in accordance with the provisions of section 202(a)(1) of the Act.

CHICAGO TUNNEL AND RESERVOIR PROJECT

Senate bill

The Senate Bill provides that the Chicago tunnel and reservior project may receive grants without regard to the allocation limitation, if the Administrator determines that such project meets the cost-effectiveness requirements of sections 217 and 218 without any redesign or reconstruction, and the Governor of the affected State demonstrates to the satisfaction of the Administrator the water quality benefits of such project.

House amendment

No comparable provision.

Conference substitute

The conference substitute includes language consistent with the Senate bill but as a free standing provision, rather than as an amendment to the Federal Water Pollution Control Act.

HAMPTON, NH AD VALOREM TAX AMENDMENT

Senate bill

This section permits the Town of Hampton, New Hampshire, to continue using its ad valorem tax user charge system for collecting the costs of operation and maintenance of its sewage treatment works. Previously, Hampton had been unable to submit its ad valorem tax system to the Environmental Protection Agency for review and approval because of a disagreement over whether the tax system was dedicated to this purpose as of December 27, 1977.

House amendment

No comparable provision.

Conference substitute

The conference substitute adopts the Senate provision as modified to include the City of Nashua, New Hampshire.

COMPLIANCE DATES

Senate bill

The bill extends deadlines for compliance with several technology-based requirements of existing law. Section 301(b)(2)(C) is amended to require compliance with best available technology (BAT) effluent limitations for toxic pollutants as expeditiously as practicable but not later than three years after promulgation of the effluent limitations, but in no case later than July 1, 1988.

Under section 301(b)(2)(E) as amended, best conventional pollutant control technology (BCT) effluent limitations for conventional pollutants must also be complied with by those deadlines. Compliance with BAT effluent limitations for nonconventional, nontoxic pollutants under section 301(b)(2)(F) as amended is required not later than three years after such limitations are promulgated but in no case later than July 1, 1988.

A new paragraph (3) is added to section 301(b), providing that best practicable control technology (BPT) effluent limitations promulgated after January 1, 1982, which require a level of control substantially greater or based on fundamentally different control technology than limitations in the permits for such industrial category issued before that date, shall be complied with as expeditiously as practicable but not later than three years after promulgation of the effluent limitations but in no case later than July 1, 1988.

New section 302(b)(3)(B) provides that effluent limitations established in permits issued after enactment of these amendments on the basis of best engineering judgment or best professional judgment, in lieu of effluent guidelines for BPT, BAT, or BCT for toxic conventional or nonconventional pollutants, shall be complied with as expeditiously as practicable but no later than three years after such limitations are established in the permit (and in no case later than July 1, 1988). These extensions only affect deadlines for technology-based effluent limitations for direct dischargers. They do not affect pretreatment compliance dates.

House amendment

The amendment extends the compliance dates for achievement of best available technology and best conventional technology.

Subsection (a) of section 4 extends the compliance date for all toxic pollutants referred to in Table 1 of Committee Print 95-30 of the House Committee on Public Works and Transportation (the priority pollutants). Compliance is to be as expeditiously as possible, but in no case later than three years and six months after the date such effluent limitations are established.

The amendment extends the compliance date for all other toxic pollutants which may be listed under Section 307(a). Compliance is to be as expeditiously as possible, but in no case later than three years and six months after the date of establishment of any applicable effluent limitations.

The amendment extends the compliance date for application of best conventional technology (for conventional pollutants—biological oxygen demand, fecal coliform, suspended solids and pH). Compliance is to be as expeditiously as possible, but in no case later than three years and six months after the establishment of applicable effluent limitations.

The amendment extends the requirement of best available technology for all other pollutants. Compliance is to be as expeditiously as possible, but in no case later than three years and six months after the date the effluent limitations are established.

The amendment requires the Administrator of the Environmental Protection Agency to promulgate final regulations establishing effluent limitations for direct discharges and limitations requiring pretreatment for all of the toxic pollutants referred to in Table I of Committee Print 95-30 in accordance with the following schedule:

Foundaries	June 30, 1985.
Nonferrous metals forming	June 30, 1985.
Organic chemicals and plastics and synthetic fibers	March 31, 1986.
Pesticides	August 31, 1985.
Nonferrous metals (phase II)	July 31, 1985.

Conference substitute

The Conference substitute establishes compliance deadlines for all technology-based requirements specified in both the House and Senate bills. These include compliance deadlines for effluent limitations applicable to priority toxic pollutants under section 301(b)(2)(C), other toxic pollutants under section 301(b)(2)(D), conventional pollutants under section 301(b)(2)(E), and non-conventional pollutants under section 301(b)(2)(F), as well as for best practicable control technology and best professional judgment effluent limitations established under section 301(b)(1)(A)(i) or on the basis of section 402(a)(1), respectively. The deadline established in ech case is as expeditiously as practicable but in no case later than three years after the date the requirement is promulgated or established, and in no case later than March 31, 1989. In addition, the Conference substitute adopts modified House language directing the Administrator to establish effluent limitations by December 31, 1986, for toxic pollutants discharged from the two remaining categories of industrial discharges for which no such limitations have been established.

With respect to the establishment of an outside date of March 31, 1989, for compliance with technology based requirements, the conferees note that prompt promulgation of the relevant effluent limitations will be essential to allow dischargers sufficient time to come into compliance. Therefore, the conferees direct that the Administrator promulgate such limitations as expeditiously as possible.

If dischargers in an entire category are unable to meet the March 31, 1989, deadline provided in the conference substitute as a result of the Administrator's failure to promulgate effluent limitations in sufficient time to allow for compliance by such date, noncompliance resulting from the Administrator's delay can be dealt with under EPA's current post-1984 deadline enforcement policy. That policy calls for the Agency, at the same time a permit containing the statutory deadline is issued, to issue an administrative order to the non-complying company which specifies a schedule of compliance as expeditiously as practicable, but not later than three years after permit issuance. Permits issued on the basis of best professional judgment, in advance of promulgation of effluent guidelines, will be able to comply with the statutory deadline, and EPA and the States should consider the use of such permits if effluent guidelines are delayed.

MODIFICATION FOR NONCONVENTIONAL POLLUTANTS

Senate bill

The bill amends section 301(g) of the Act to restrict the circumstances under which a modification from best available technology standards (BAT) can be granted for nonconventional pollutants.

The amendment to section 301(g) allows modifications to BAT guidelines only for five well studied nonconventional pollutants—ammonia, chlorine, color, iron and total phenols (4AAP). EPA has developed adequate information on these pollutants as a result of currently pending applications for modifications from the iron and steel and steam electric industries.

The Administrator may evaluate additional nonconventional pollutants and recommend to Congress that they are eligible for inclusion under section 301(g), but any such recommendation must be enacted by Congress to become effective.

The provision also limits to one year the time in which the Administrator can make a determination on a request for a modification under section 301(g)(4). The discharger must, in its application, make an affirmative showing that the discharge will meet the conditions in section 301(g) (A), (B), and (C). For the purposes of this provision, final Agency action means the administrative decision document or final permit issued by EPA, following public notice and comment as appropriate.

Section 301(g)(5) clarifies that this amendment applied to all modification requests under this subsection which are pending upon the date of enactment of the Clean Water Act Amendments of 1985. Specifically, for such pending requests, this provision is intended to restirct EPA's consideration to requests for modification to only those five nonconventional pollutants listed in section 301(g)(1) as amended. Pending requests for modification for other nonconventional pollutants cannot be granted and therefore will not be acted upon. For completed applications pending at the time of enactment of the the Clean Water Act Amendments of 1985, EPA must take final Agency action within one year of the date of submission of the completed application to EPA, or under section 301(g)(4) the application will be deemed to be denied. This restriction applies specifically to completed applications as defined in EPA's regulations. Applicants with pending initial applications filed in accordance with section 301(j) may file completed application within a reasonable time after enactment.

The bill amends section 301(j) of the Act to forbid the stay of any requirements or limitations for any pollutant other than for the pollutants for which a section 301(g) modification may be sought.

House amendment

The House amendment amends section 301(g) of the act which provides for variances from effluent limitations for conventional pollutants. The amendment provides that variances may be sought only for ammonia, chlorine, color, iron and phenols. The Administrator may add pollutants to this list of those for which variances may be sought and may also remove pollutants from this list.

Conference substitute

NON-CONVENTIONAL POLLUTANTS

The Conference substitute specifies five pollutants for which modifications under section 301(g) may be sought. It provides that the Administrator may list additional pollutants in response to a petition. To apply to a particular industrial category, this listing must occur prior to the deadline for submitting applications for modifications, which is 270 days after promulgation of an applicable effluent limitation guideline. A petitioner may file an application for modification simultaneously with a petition for listing a pollutant under section 301(g).

Before listing a pollutant under section 301(g), the Administator first must determine whether the pollutant meets the criteria for listing as a toxic pollutant under section 307(a)(1), as that term is defined in section 502(13). If the Administrator determines that the pollutant does meet these criteria, then the Administrator is required to list the pollutant under section 307(a)(1). If the Administrator determines that the pollutant does not meet these criteria, and the Administrator determines that adequate methods and sufficient data about the pollutant are available to enable the Administrator to make decisions respecting modifications under subsection (g)(2), then he shall list it under section 301(g). The burden of proof respecting submission of these data and for showing the adequacy of the data and of test methods is upon the person submitting the application for listing.

An application for listing a pollutant under section 301(g) or for a modification of permit respecting such pollutant does not stay compliance deadline requirements for any pollutant other than that for which the modification is being sought. The Administrator is required to approve or disapprove an application for a modification within one year of the date of application or, in a case in which a petition for listing the pollutant under section 301(g) is approved, within one year of such approval.

If an application for modification under section 301(g) is disapproved, the applicant must meet compliance deadlines for all applicable effluent limitations, including those for the pollutant subject to the application. If such an application is approved, the applicable compliance date with respect to the pollutant for which the modification is sought will be determined under section 301(b) and section 309.

DISCHARGE INTO MARINE WATERS

Senate bill

The bill establishes restrictive conditions on the qualifications of applicants for a section 301(h) modification and the ocean waters into which they discharge. In order to apply for a section 301(h) ocean discharge modification, a municipal treatment facility must be in compliance with applicable pretreatment regulations. In the absence of Fedeal categorical pretreatment standards, treatment works serving a population of 5,000 or more persons must be enforcing a comparable pretreatment program to assure the control of toxic pollutants at the time of application.

The bill clarifies that marine waters receiving discharges must exhibit characteristics which assure that the diluting water does not contain significant amounts of effluents previously discharged from the POTW.

Another amendment to section 301(h) deals with discharges into stressed waters. The amendment provides that a section 301(h) modification may not be issued for estuarine waters if, at the time of application, the waters do not support a balanced indigenous population or allow recreational activities, or exhibit water quality below the water quality standards adopted to protect public water supplies, wildlife, or recreational activities. The prohibition applies regardless of any causal relationship between such characteristics and the applicant's discharge.

Section 310(j) is amended to allow a period of thirty days after enactment for a publicly owned treatment works with an existing contract to discharge its sewage into another treatment works which has applied for a section 301(h) modification, in which to apply for such a modification in its own right.

House amendment

The amendment amends section 301(h) of the Act with respect to discharges into marine waters. The amendment provides that in order to obtain a permit for less than secondary treatment where the effluent will be discharged into the ocean the applicant must have in effect a pretreatment program and must provide at least primary treatment. Also, section 307(b)(1) relating to pretreatment removal credits is amended to provide that these credits must be given where effluent limitations will not be violated, and will be not interference with the method of disposal of the sludge and the revised pretreatment standards will not interfere with the operations of a treatment works. The other provisions of section 307(b)(1) relating to effluent limitation and determination of removal by the treatment works remain in effect.

This amendment also prohibits the discharge of sewage treatment effluent into estuaries.

The amendment relating to applications for ocean discharge modifications provides that a publicly-owned treatment works which has a contractual arrangement to use a portion of the capacity of an ocean outfall operated by another treatment works which has applied for a modification may also apply for a modification in its own right.

Conference substitute

The conference substitute adopts a combination of the House and Senate provisions. The House amendment concerning consideration of other sources of pollutants, and limitations on scope of monitoring, is adopted. The limitation on monitoring is limited to modifications not tentatively or finally approved as of enactment. The House provision concerning urban area pretreatment programs is adopted and modified by including the Senate language requiring sources to be in compliance with applicable pretreatment requirements, and requiring the applicant to enforce such requirements. House and Senate language is combined to provide that an applicant must be discharging effluent which has received at least primary or equivalent treatment and meets section 304(a)(1) criteria after initial mixing. The phrase "initial mixing" shall not be interpreted expansively. The substitute adopts Senate language regarding the definition of primary or equivalent treatment and on limitations on issuance of permits. The conference substitute prohibits issuing any modification for the discharge of any pollutant into the New York Bight Apex.

Section 301(h) is amended by the conference substitute to provide that in order for a permit to be issued, the marine waters must exhibit characteristics assuring that water providing dilution does not not contain significant amounts of previously discharged effluent from the treatment works from which the discharge is made. The reference to water supplying dilution does not include those waters immediately surrounding the point at which the effluent is discharged in which initial mixing occurs.

With respect to the amendments to Section 301(j) of the Act, the Conference substitute adopts the Senate language.

FILING DEADLINE FOR TREATMENT WORKS MODIFICATION

Senate bill

No comparable provision.

House amendment

The provision amends section 301(i) by removing the filing deadline for applications for extensions of the date by which secondary treatment must be achieved and provides that the extension of a filing date does not apply to treatment works which are subject to an administrative or judicial compliance schedule.

Conference substitute

In lieu of the House language, the conference substitute extends the filing deadline for such applications to 180 days after enactment of the Water Quality Act of 1986. The conference substitute adopts language of the House bill limiting the application of the extension to treatment works not subject to a court order or final administrative order issued by EPA or a State. The Administrator should use the discretion provided under this subsection to assure that granting such request would not upset an existing compliance schedule or delay compliance with the July 1, 1988, compliance deadline. This amendment should be read to be consistent with the EPA's National Municipal Policy.

INNOVATIVE TECHNOLOGY COMPLIANCE DEADLINES FOR DIRECT DISCHARGERS

Senate bill

No comparable provision.

House amendment

Section 301(k) of the Act provides that, in the case of any facility which proposes to comply with the requirements of best available technology by replacing existing production capacity with an innovative production process, which will result in effluent reduction significantly greater than that required by the otherwise applicable effluent limitation or with the installation of an innovative control technique that has a substantial likelihood for enabling the facility to comply with the applicable effluent limitation by achieving a significantly greater effluent reduction than that required by the applicable limitation, the Administrator may establish a compliance date no later than July 1, 1987, three years later than the final compliance date otherwise provided in the Act. The House bill amends this provision, changing the compliance date from July 1, 1987, to a date two years after the date for compliance with the effluent limitation which is otherwise applicable.

The House bill also amends section 302(k) to permit the same extension for conventional pollutants.

Conference substitute

The conference substitute adopts the House provision.

The conferees intend that the term "industry-wide application" means that application of the innovative system, production process, or control technique is technically feasible at a significant portion of the facilities in an industrial category or subcategory and will be made commercially available by the applicant, unless the applicant is the only facility in the subcategory.

FUNDAMENTALLY DIFFERENT FACTORS

Senate bill

The Senate bill authorizes the Administrator to grant fundamentally different factors (FDF) modifications and defines the conditions under which the Administrator may do so.

The amendment specifies four criteria that must be demonstrated by the applicant to the satisfaction of the Administrator, before alternative requirements can be established.

First, a facility must be fundamentally different with respect to at least one factor, other than cost, specified in sections 304(b), 304(g), or 307(b) and considered by the Administrator in establishing the specific national effluent limitations guidelines and standards of concern to the facility. Cost may not be a factor upon which relief may be granted.

The second criteria requires that applications for an FDF modification must be based solely on information and supporting data which have been submitted to the Administrator during the rulemaking process and which specifically raise the factors that are fundamentally different for the facility.

Third, the amendment specifies that the alternative requirement imposed on the applicant can be no less stringent than justified by the applicant's fundamental difference from the rest of the category or subcategory with respect to the statutory factors (other than cost) specified in section 304 (b) or (g) of the Act.

Fourth, if relief is granted, any alternative requirement shall not result in any non-water quality environmental impact markedly more adverse than the impact considered by the Administrator in establishing the applicable national effluent limitations guidelines and standards.

The bill contains several additional restrictions on EPA's authority to grant modifications in order to avoid the delays in "fundamentally different factors" proceedings. An applicant for an alternative requirement must submit a complete application to the Administrator not later than 120 days after publication of the final effluent limitation guideline or categorical pretreatment standard in the Federal Register. The Administrator may not waive this deadline or extend it for submission of additional data.

If EPA amends a guideline or standard, an applicant may submit an FDF variance request within 120 days of publication of the final revision in the Federal Register. In such a case, the revision must specifically affect the discharge limitations or standards applicable to the facility and must be the limitations or standards from which the applicant is seeking relief under this subsection.

Section 301(n)(2) requires the Administrator to deny any application that is not complete, without providing for an opportunity for reapplication. The applicant must submit a complete application within the 120 day period.

Section 301(n)(2)(B) requires that final EPA action be taken within 240 days after submission of an application to a State or to EPA, or the application will be deemed to be denied.

Pending applications on the date of enactment shall be deemed to have been submitted to the Administrator 30 days after enactment of this amendment. This provision sets in motion the Administrator's duty to act on the application within 240 days. Applications filed after enactment shall not be deemed complete unless accompanied by the required application fee.

Section 301(n)(3) provides that an application for alternative requirements under section 301(n) shall not stay the facility's obligation to comply with the effluent limitations guideline or standard which is the subject of the application.

House amendment

The House amendment adds a new subsection in to section 301 of the Federal Water Pollution Control Act, Section 301 requires compliance with effluent limitations based on best practical best available and best conventional technologies.

The new subsection provides that upon application of any person who provided or did not have a reasonable opportunity to provide information to the Administrator in the rulemaking to establish or revise any effluent limitation under section 301 or section 304 of the Act, the Administrator may grant a variance from the application of the limitation with respect to the discharge by the person of any pollutant if the Administrator determines that factors relating to the facilities, equipment, and processes of the person are fundamentally different than the factors considered in the establishment of the effluent limitations.

An application for a variance must be made within 180 days after establishment or revision of an effluent limitation for which a variance is sought. If the application is denied, the applicant must comply with the original compliance date for the limitation. E.P.A. is directed to take prompt action in making a decision, and is directed to do so within 180 days, to the maximum extent practicable.

The House amendment applies only to effluent limitations established or revised after the date of enactment. The granting of variances from effluent limitations established or revised prior to the date of enactment is to be in accordance with procedures established before the date of enactment. Also, the amendment shall not affect any procedures or requirements in effect before the date of the enactment with respect to the granting of variances from the application of effluent limitations established or revised on or before the date of the enactment with respect to the granting of variances from the application of effluent limitations established or revised on or before the date of enactment in accordance with any provision of the Federal Water Pollution Control Act.

Conference substitute

The conference substitute limits the authority of the EPA Administrator to modify a minimum, national treatment requirement for an individual facility within an industry if the facility is found to be fundamentally different from other facilities within the industry on the basis of certain factors considered by the Administrator in establishing the guidelines or standards applicable to the facility's industrial category.

This new provision provides a clearly defined and limited authority in the statute for modification of treatment requirements for individual facilities. The provision is intended to assist the Administrator in addressing unique circumstances and other variations in development and effective administration of national effluent guidelines and standards.

This section will require the EPA Administrator to make difficult decisions with regard to the magnitude of differences among similar facilities within an industry. In exercising this judgment, the Administrator should place high priority on the prinicple that all similarly situated facilities within an industrial category or subcategory are to meet national minimum treatment requirements. The authority of this section is intended only to provide the Administrator with the authority needed to implement this aspect of the statute effectively and should not be used to generally relax or retreat from national minimum requirements for an industry.

The conference substitute places several important new limits on the Administrator's fundamentally different factors authority.

The new provision provides that a facility may be found to be fundamentally different based on factors identified in sections

304 (b)(2) and (g). These factors include the age of equipment and facilities, the process employed, the engineering aspects of the types of control techniques, process changes, and other factors deemed appropriate by the Administrator.

The bill specifically excludes consideration of costs, independent of other eligible factors, as a basis for establishing a fundamental difference with regard to an individual facility.

This new subsection is not intended to prohibit the EPA from modifying treatment requirements in a case where a fundamental difference in an aspect of a facility which is eligible for consideration (e.g. age of facility, process employed) would result in a reduction in costs to a facility. When such an eligible factor is under review, EPA may consider the costs specifically associated with that factor, but must be able to justify a finding of a fundamental difference on the basis of eligible factors. EPA shall not replace a substantive and technical assessment of eligible factors with a shortened cost test designed to indicate a fundamental difference (e.g. by suggesting that when the costs of an eligible factor at an individual facility are twice the costs at average facilities, the factor is fundamentally different).

The reported bill specifies several procedural requirements and other limitations governing applications for modifications under this section.

Subsection (n)(1)(B) provides than an application be based solely on information and supporting data submitted to the Administrator during the development or revision of a guideline or on information the applicant did not have a reasonable opportunity to submit during the rulemaking. The lack of a reasonable opportunity to submit information is based on a lack of actual or constructive notice of the rulemaking or on the development of new circumstances in the field facing specific facilities. This provision will assure that effluent limitations and standards are as comprehensive as possible, and thereby reduce the need for applications under this subsection. This provision will also discourage withholding of information during the rulemaking process for subsequent use in an application for treatment modification under this subsection.

The conferees recognize that, where the record is already closed and an applicant has new information to present bearing on the guideline or standard, the applicant continues to have the right to petition the Administrator to reopen the rulemaking and record and consider creation of a subcategory. The Administrator's disposition of such a petition is subject to judicial review under section 509(b) of the Act.

Subsection (n)(1)(C) provides that the alternative requirement imposed on the applicant can be no less stringent than justified by the applicant's fundamental difference from the rest of the category or subcategory with respect to eligible factors.

Subsection (n)(1)(D) provides that any alternative requirement shall not result in a nonwater quality environmental impact which is markedly more adverse than the impact considered by the Administrator.

Subsection (n)(2) requires that an application under this section shall be submitted within 180 days after the publication of the initial guideline or standard. Subsection (n)(3) provides that an application shall be aproved or denied by final Agency action within 180 days after submission. For the purposes of this section, final Agency action means the administrative decision issued by the EPA, following public notice and comment, as appropriate and including a statement of the basis for the decision. Subsection (n)(4) states that the Administrator may allow the applicant to submit additional information and supporting data with regard to an application prior to the 180-day decision deadline.

In the case of guidelines for the oil and gas extraction industry and with respect to three cane sugar processing mills along the Hamakua Coast of Hawaii, the EPA may temporarily withdraw the applicable guideline at any time, issue a Best Practical Judgment permit to affected facilities, and then reissue the guideline with an appropriate subcategory.

Subsection (n)(5) provides that an application for an alternative requirement based on fundamentally different factors which is pending on the date of enactment may be amended by the applicant within 180 days after such date of enactment.

Section 301(n)(6) provides that an application for an alternative requirement under this section shall not stay the facility's obligation to comply with the effluent limitation guideline or standard which is the subject of the application. If an application for an alternative requirement is denied by the Administrator, the applicant must comply with the limitation or standard as established and the original deadline. The compliance date for a requirement for which an alternative is granted is to be determined under sections 301(b) and 309.

Section 301(n)(8) of the conference substitute also provides that the Administrator shall provide to the Congress a report on the status of applications for modifications under sections 301, 304, and 307(b) of the Act every six months after the date of enactment.

The conference substitute shall apply to primary and secondary national effluent limitations and categorical pretreatment standards for industrial categories currently identified, such categories as may be identified in the future, and to any revisions of guidelines or standards for such categories.

The owner or operator of a facility seeking a fundamentally different factor modification has the burden of proving to the satisfaction of the Administrator that the facility is eligible for an alternative requirement under this subsection.

Under the conference substitute, section 301(l) of the Act, which excludes toxic pollutants from modifications under this Act, is amended to allow modifications only under this section for toxic pollutants. This amendment to section 301(l) does not in any way weaken the application of the section to modifications of the Act other than provided under section 301(n).

The Administrator shall obtain the concurrence of a State before approving any alternative requirements under this subsection.

All of these provisions are to be self-implementing and are to take effect upon enactment of the Water Quality Act of 1986. The Administrator is encouraged to amend the appropriate regulations to make them consistent with these requirements; however, the failure of the Administrator to make sure revisions will not affect the implementation of these provisions.

Section 301(o) of the conference substitute requires the Administrator to establish a system of fees to recover costs of reviewing and processing these applications. Applications are to be accompanied by an appropriate fee, as determined by the Administrator.

Fees collected under this section shall be deposited into a special fund in the United States Treasury entitled "Water Permits and Other Services". Such funds are to be available for appropriation to carry out the Agency activity for which the fee was charged. Creation of this special fund will assure that fees charged for processing of applications will be used to support water permit related activities, rather than other activities. The existence of this fund shall not be a basis for reductions in funding levels for related program activities.

The Administrator is to withdraw existing effluent guidelines applying to fertilizer plants in Louisiana which had commenced construction on or before April 8, 1974. Within 180 days, the Administrator is to issue Best Practical Judgment permits to facilities no longer covered by the guidelines.

COAL REMINING OPERATIONS

Senate bill

No comparable provision.

House amendment

The House amendment allows the issuance of a permit modifying effluent limitations with respect to the pH level of preexisting discharges of iron and manganese from the remined area of a coal remining operation. The applicant for such a permit modification must demonstrate to the satisfaction of EPA or, where applicable, the State that the coal remining operation will result in the potential for improved water quality from the remining operation.

Conference substitute

The conference substitute adopts the House amendment. The conferees specifically agreed to retain the language "potential for" with the understanding that EPA and the States may be "satisfied" based on a conviction that it is probable that there will be actual improvement in water quality as a result of modified requirements.

INDIVIDUAL CONTROL STRATEGIES FOR TOXIC POLLUTANTS

Senate bill

The reported bill modifies sections 302, 303, 304, and 305 of the Act, to provide for the development of water quality based effluent limitations after the implementation of best available technology (BAT).

States are required to undertake a progressive program of toxic pollutant load-reduction where BAT is not sufficient to meet State water quality standards and support public health and water quality objectives of the Act. The following scheduled requirements are included in this provision:

(1) Under new section 305(c), within two years of enactment of the Clean Water Act Amendments of 1985, States must identify those water bodies within or adjacent to them which will not meet State water quality standards because of toxic pollutants after the implementation of BAT.

(2) Under new section 303(c)(2)(B), whenever a State reviews or revises existing water quality standards or adopts new standards, it must adopt numerical criteria for those toxic pollutants which could reasonably be expected to interfere with designated water uses and set such criteria at the levels necessary to support such uses. States shall establish specific numerical criteria based on the Environmental Protection Agency's existing national water quality criteria and other sources. A State may also utilize toxic pollutant criteria based on biomonitoring techniques or assessment methods to supplement numerical criteria. While numerical criteria are immediately required for toxic pollutants which are highly persistent, bioaccumulative, or known or suspected carcinogens, mutagens, or teratogens, for other toxic pollutants biomonitoring can be used until numerical criteria can be developed.

(3) Under new section 304(a)(8), the Administrator, in consultation with appropriate State agencies, is to provide information within two years of enactment of the Clean Water Act Amendments of 1985, on methods of establishing criteria with biomonitoring assessment techniques.

(4) Under new section 303(d)(4), not later than two years after the identification of water bodies with toxic pollutant water quality standard problems, States must establish effluent limitations for individual dischargers into such water bodies, based on established toxic pollutant criteria and adequate to attain water quality standards. These effluent limitations must be incorporated into permits which must be complied with no later than three years after the establishment of the effluent limitation.

Section 302(a) of the Act, as amended by the reported bill, provides for effluent limitations to be established whenever, in the judgment of the Administrator, a water body will not attain or maintain the level of water quality which will assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water, even after the application of all the technology-based requirements of the Act, or whenever such a water body has been identified under new section 305(c)(1)(B). For such water bodies, the Administrator must establish effluent limitations for any point sources interfering with attainment or maintenance of that level of water quality providing a degree of control which can reasonably be expected to contribute to attaining or maintaining the required water quality.

Under section 302(b), as amended, the Administrator is permitted, with the concurrence of the State, to modify effluent limitations for non-toxic pollutants established by the Administrator under section 302(a) if the applicant demonstrates at the time the effluent limitation is proposed that there is no reasonable relationship between the economic and social costs and the benefits to be obtained from achieving the proposed limitation.

The Administrator, with the concurrence of the State, may also modify effluent limitations established under section 302(a) for discharges of toxic pullutants, for single period nct to exceed five years, if the applicant demonstrates at the time the effluent limitation is proposed that the modified requirement represents the maximum degree of control within the economic capability of the owner of the particular source, and will result in reasonable further progress (beyond BAT) toward attaining the level of water quality specified in section 302(a). The provisions of new section 302(b)(2) apply only to effluent limitations established by the Administrator under section 203(a).

The provisions of section 302(b)(2) authorizing the modification of effluent limitations apply only to the effluent limitations established under section 302(a).

New section 304(a) requires the Administrator to publish within 12 months a plan (1) establishing a schedule for the annual review and revision of effluent guidelines already promulgated; (2) identifying categories of sources of toxic or nonconventional pollutants for which guidelines have not yet promulgated; and (3) establishing a schedule for promulgation of those guidelines, no later than 3 years after identification of the categories. Guidelines are required for any category of sources discharging significant amounts of toxic pollutants.

House amendment

The House amendment provides for the development and implementation of individual control strategies to achieve compliance with applicable water quality standards where it is determined that such compliance will not result from the application of best available technology and best conventional technology.

The House amendment requires each State, not later than one year after the date of enactment of this legislation, to submit to the administration a list of all navigable waters in such State for which the State does not expect the applicable water quality standard to be achieved after the requirements for best available technology and best conventional technology are met, due entirely or substantially to discharges from point sources of toxic pollutants listed pursuant to section 307(a). For each segment of the water included on this list, the State is to determined the specific point source discharging toxic pollutants which are believed to be preventing or impairing such water quality, and the amount of each toxic pollutant discharged by each source. The State submission is to also include an individual control strategy, which the State determines will produce a reduction in the discharge of toxic pollutants from point sources identified by the state, through the establishment of effluent limitations and water quality standards. The State's proposed reduction in toxic discharges must be sufficient, in combination with other controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than three years after the date of the establishment of the strategy.

Not later than 120 days after the last day of the one-year submittal period, the Administrator shall approve or disapprove the control strategies submitted by a state.

If a State fails to submit control strategies or the Administrator does not approve the control strategies submitted by a State, then, not later than one year after the last day of the submittal period the Administrator, in cooperation with the State and after notice and opportunity for public comment, shall publish in the Federal Register a list of all navigable waters in the State for which the Administrator does not expect the applicable water qualify standard will be achieved after the requirements for best available technology and best conventional technology are met, due entirely or substantially to discharges from point sources of any toxic pollutants listed pursuant to section 307(a). For each segment of the navigable waters included on the list, the Administrator shall determine the specific point sources discharging any such toxic pollutant which is believed to be preventing or impairing such water quality and the amount of each such toxic pollutant discharged by each such source. At a minimum, the Administrator shall consider for listing any navigable waters for which any person submits a petition to the Administrator for listing not later than 120 days after the last day of the submittal period.

Not later than one year after the date of publication of the required list, the Administrator, in cooperation with the States, shall issue proposed regulations setting forth, for each segment of the navigable waters listed, an individual control straategy. Each individual control strategy shall produce a reduction in the discharge of toxic pollutants from point sources identified by the Administrator through the establishment of effluent limitations and water quality standards which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than three years after the date of promulgation of the final strategy. Not later than 180 days after issuing the proposed regulations, the Administrator shall promulgate each individual control strategy as a final regulation.

The Administrator shall implement each individual control strategy established or promulgated under this subsection by modifying or requiring the modification of permits under section 402 of the Act.

The House amendment also amends the citizen suits provision of section 509 of the Act of allow interested persons to bring a legal action for review of the Administrator's promulgation of individual control strategies.

Conference substitute

The conference substitute adopts a comprehensive program for development of individual control strategies for toxic pollutants based on elements from both the Senate and House bills.

The conference substitute modifies sections 303 and 304 of the Act, to provide for the development of water quality based effluent limitations after the implementation of best available technology (BAT).

Under subsection (a) of the conference substitute, States are required to undertake a progressive program of toxic pollutant load reduction where BAT is not sufficient to meet State water quality standards and support public health and water quality objectives of the Act. Under new section 304(l), within two years of enactment of the Water Quality Act of 1986, States must identify those water bodies within or adjacent to them which will not meet State water quality standards because of toxic pollutants after the implementation of BAT, new source performance standards and pretreatment standards. For each segment of the waters included on this list, the State is to determine the specific point sources discharging toxic pollutants which are believed to be preventing or impairing such water quality, and the amount of each toxic pollutant discharged by each source. The State submission is to also include an individual control strategy which the State determines will produce a reduction in the discharge of toxic pollutants from point sources identified by the State, through the establishment of effluent limitations and water quality standards containing numerical criteria. The State's proposed reduction in toxic discharges, in combination with other controls on point and nonpoint sources of pollutant, must achieve the applicable water quality standard as soon as possible, but not later than three years after the date of the establishment of the strategy.

Not later than 120 days after the day the submittal is due, the Administrator must approve or disapprove the control strategies submitted by a State. If a State fails to submit control strategies or the Administrator does not approve the control strategies submitted by a State, then not later than one year after the day the submittal is due, the Administrator, in cooperation with the State and after notice and opportunity for public comment, must develop an individual control strategy which meets the requirements otherwise applicable to the State. At a minimum, the Administrator shall consider for listing any navigable waters for which any person submits a petition to the Administrator for listing not later than 12 days after the last day of the submittal period.

Subsection (b) of the conference substitute adopts language in the House bill amending section 509 of the Act to allow interested persons to bring a legal action for review of the Administrator's promulgation of individual control strategies.

Subsection (c) adopts Senate language requiring the Administrator to develop and publish (1) guidance to be used by the States in identifying those waters for which individual control strategies will be required and (2) information on methods for establishing and measuring water quality criteria for toxic pollutants.

Subsection (d) of the substitute follows language in the Senate bill to require that during State review, revision, or adoption of water quality standards, the State must adopt criteria for all priority toxic pollutants for which water quality criteria have been published under section 304(a). The State's criteria are to be based on specific numerical criteria. Where numerical criteria are not available, the State shall use biological monitoring or assessment methods.

Subsection (e) adopts Senate language amending section 302 of the Act.

Subsection (f) adopts Senate language providing for development of a plan which will include a schedule for periodic review and revision of promulgated effluent guidelines, categorization of toxic and nonconventional pollutant sources for which effluent limitation guidelines and new source performance standards have not been established, and a schedule for promulgation of effluent limitations for such categories of point sources.

Subsection (g) contains slightly modified language taken from the House bill calling for EPA to undertake a study of water quality improvements achieved pursuant to the application of technology-based effluent limitations under section 301(b)(1) of the Act. The Administrator is to report on the results of the study within two years.

WATER QUALITY IMPROVEMENT STUDY

Senate bill

No comparable provision.

House amendment

The House amendment directs the Administrator to study the water quality improvements which have been achieved by application of best available technology. The study must include an analysis of the effectiveness of, and the costs and benefits associated with, application of best available technology and must also include an analysis of methods of improving the Nation's water quality program and its effectiveness.

Conference substitute

The conference substitute adopts the House amendment with modification.

PRETREATMENT STANDARDS

Senate bill

No comparable provision.

House amendment

The amendment amends section 307 of the Federal Water Pollution Control Act to authorize the owner or operator of a publicly owned treatment works to grant up to a two-year extension for compliance with a categorical pretreatment standard to an indirect discharger that intends to comply with such applicable standard by using an innovative treatment system that meets the criteria specified in section 301(k) of the Act, if (1) the Administrator determines that the innovative system has the potential for industry-wide application and the action will not cause the publicly owned treatment works to violate its NPDES permit, and (2) the Administrator or a State having an approved pretreatment program concurs with the proposed action of the owner or operator of the publicly owned treatment works.

The amendment directs the Administrator to increase the number of employees in the Agency in order to effectively implement the Federal Water Pollution Control Act's pretreatment requirements.

Conference agreement

The Conference Agreement adopts the House Amendment and amends section 307 of the Federal Water Pollution Control Act. A 2-year compliance extension is available for existing, but not new, facilities using innovative pretreatment systems. Application for such modification does not extend the time in which compliance guidelines must be met, and general pretreatment and sludge regulations must be complied with.

No facility that receives an innovative pretreatment modification can cause or contribute to any violation of section 402 or section 405 of the Act.

The conferees intend that the term "industry-wide application" in section 307(e) means that application of the innovative system or control technique is technically feasible at a significant portion of the facilities in an industrial category or subcategory and will be made commercially available by the applicant unless the applicant is the only facility in the subcategory.

INSPECTION AND ENTRY

Senate bill

No comparable provision.

House amendment

The amendment imposes a penalty on any authorized representative of the Administrator who discloses confidential information obtained in the inspection and monitoring of a discharger.

Conference substitute

The conference substitute adopts the House amendment as modified to provide that all information reported to, or otherwise obtained by, EPA shall be made available upon written request to any committee of Congress.

MARINE SANITATION DEVICES

Senate bill

No comparable provision.

House amendment

The amendment modifies the requirement for marine sanitation devices to provide that a State may impose a more stringent standard for vessels which are used primarily as residences.

Conference substitute

The conference substitute adopts the House language with the addition of a provision authorizing States to enforce Federal standards for all vessels.

The question of whether a houseboat is used primarily as a residence is a matter to be determined by the State in which the houseboat is located.

CIVIL AND CRIMINAL PENALTIES

Senate bill

The bill amends sections 309 and 404 of the Clean Water Act relating to civil and criminal penalties.

Civil penalties

Section 309 and 404 of the Act are amended to increase the civil judicial penalty limit from $10,000 to $25,000 per violation, to clarify that each distinct violation is subject to a separate daily penalty assessment of up to $25,000, and to clarify that violations of pretreatment program requirements are subject to civil penalties.

The bill would also expressly require the courts to consider a number of factors, inlcuding, in particular, the economic benefit gained as a result of the violation. Reasonable approximations of economic benefit will suffice. Other objective factors customarily taken into account in assessing penalties, such as the history of violations, good faith efforts to comply and economic impact on the violator, also may be taken into account in arriving at an appropriate penalty.

Administrative civil penalties

The Clean Water Act currently provides the Administrator with two civil enforcement options. When faced with a violation of the Act, the Administrator may issue an order requiring compliance or the Administrator may bring a civil action in the appropriate U.S. district court for penalties and injunctive relief.

The bill gives the Administrator a third option: to assess administrative civil penalties of up to $10,000 per day for each violation of a Clean Water Act requirement. The total maximum administrative penalty that may be assessed under this provision is $125,000 for an individual enforcement action.

This new authority to administratively assess civil penalties sunsets after five years.

Prior to issuing an administrative order assessing a civil penalty, the Administrator must give the person against whom the penalty is to be assessed written notice of the proposed penalty and an opportunity to request, within 30 days of receipt of such notice, a hearing. Such a hearing includes the right to a reasonable opportunity to be heard and to present evidence. Because administrative penalty assessments will be used in smaller cases and often will be based on discharge monitoring reports routinely submitted by permittees, formal administrative procedures strictly in accordance with the formal adjudicatory procedures of the Administrative Procedures Act are not required.

However, the Administrator is required to provide the public with notice of the proposed penalty assessment and a reasonable opportunity to comment on the proposal. Public notice of such proceedings must be given in a manner that will apprise interested citizens of the proceeding. If a hearing on the proposed assessment is conducted, any citizen who commented on the proposal shall be given notice of such a hearing and a reasonable opportunity to be heard and to present evidence at the hearing. If no hearing is held, the Administrator must set aside the penalty order and provide a hearing when presented with evidence that the order was inadequate or improper.

An order assessing a penalty becomes final and nonappealable 30 days after its issuance or, in the case of a post-assessment request for a hearing, 30 days following the final action by the Administratior.

No one may bring an action to recover civil penalties under section 309 (b) and (d), 311(b), or 505 of this Act for any violation with respect to which the Administrator has commenced and is diligently prosecuting an administrative civil penalty action, or for which the Administrator has issued a final order not subject to further judicial review (and for which the violator has paid the penalty). This limitation applies only to an action for civil penalties for the same violations which are the subject of the administrative civil penalties proceeding. It would not apply to an action for civil penalties for a violation of the same requirement of the Act that is not being addressed administratively or for a past violation of another pollutant parameter (even one resulting from the same discharge which is the subject of the administrative civil penalty proceeding). In addition, this limitation would not apply to: 1) an action seeking relief other than civil penalties (e.g., an injunction or declaratory judgment); 2) an action under section 505(a)(1) of this Act filed prior to commencement of an administrative civil penalty proceeding for the same violation: or 3) a violation which has been the subject of a notice of violation under section 505(b)(1) of this Act prior to initiation of the administrative penalty process, provided that, in the latter case, an action under section 505(a)(1) of this Act is filed within 120 days of the notice of violation.

The Agency can prevent duplicate proceedings by intervening in the ongoing citizen enforcement suit or by bringing its own judical action before a citizen suit is filed. This amendment does not preclude administrative or judical enforcement actions by the Administrator for any violations not specifically penalized by the initial enforcement action.

Judicial review of a penalty assessment is available to any person against whom a civil penalty order is issued as well as to any citizen who commented on a proposed assessment. Judicial review is not to be de novo review, but will be based upon whether the Agency's findings of a violation is supported by substantial evidence in the administrative record and whether the assessment of the penalty is an abuse of discretion. Where it is clear that the Agency has assessed such an unreasonably low penalty as to constitute an abuse of discretion, the court may choose to impose its own higher penalty rather than exercise is authority to remand. District courts are free to remand cases in appropriate circumstances.

The penalty collection proceeding will not be an opportunity to contest the penalty assessment. The discretion to compromise, mitigate or abandon such claims continues to reside with the Attorney General.

Criminal penalties

The bill would elevate penalties for persons who knowingly or negligently introduce into a sewer system or a POTW, a pollutant or hazardous substances which such person knew or reasonably should have known could cause personal injury or property damage. Criminal liability shall also attach to any person who is not in compliance with all applicable Federal, State and local requirements and permits and causes a POTW to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of the Act.

The felony level penalties for knowing violations (not less than $5,000 nor more than $50,000 per day of violation and imprisonment for up to three years) are more closely comparable to the levels provided by the 1984 amendments to the Solid Waste Disposal Act RCRA and reflect the commensurately serious nature of the violations to be criminally prosecuted under the Clean Water Act. Existing misdemeanor penalties are retained to address those negligent violations which merit lesser punishment.

This section also adds to section 309(c) enhanced felony penalties for certain life-threatening conduct based upon knowing violation of certain predicates in the Act. In the event of such knowing violation, the Senate bill subjects to greater punishment one who knows that he thereby placed another person in imminent danger of death or serious bodily injury. The criminal penalties that apply upon conviction (up to 15 years imprisonment plus fine of up to $250,000 for individuals, a fine of up to $1,000,000 for organizations) are equivalent to the RCRA knowing endangerment provision, as recently amended.

The maximum term of imprisonment contained in the provision of the current law penalizing the knowing making of false statements, representations and certification, or tampering with monitoring equipment required under the Act, is increased from six months (a petty offense) to two years (a felony). The provision doubling the maximum punishment with respect to both fine and imprisonment for second and subsequent convictions under the same paragraph of the Act is extended to this provision as well as to the knowing endangement provision.

This bill also extends and consolidates criminal sanctions involving violations of the provisions of section 405 governing disposal of sewage sludge, violations of requirements imposed in State pretreatment programs approved under section 402(b)(8), violations of section 318 permits, and violations of section 404 permits issued by the Secretary of the Army or by a State.

CIVIL PENALTIES

House amendment

The amendment increase the maximum amount of a civil penalty for violation certain provisions of the Act from $10,000 per day to $25,000 per day.

The amendment provides that the Federal Water Pollution Control Act shall not be construed as requiring a state to have a civil penalty for violations described in section 309(d) which has the same monetary amount as the civil penalty established by this section. This related to the requirement in the Act that a state have adequate enforcement and penalty provisions in order to assume management of the National Pollution Discharge Elimination System under section 402 of the Act.

The amendment provides that a civil penalty may not be assessed with respect to a violation if a penalty has been assessed with respect to the same violation or a violation having substantially the same cause.

ADMINISTRATIVE PENALTIES

The amendment authorizes the assessment of administrative civil penalties for violations of the Act. Whenever on the basis of any information available to him the Administrator finds that any person is in violation of sections 301 (except with respect to a violation of section 404), 302, 306, 307, 318 or 405 of the Act or is in violation of any permit condition or limitation implementing any of these sections in a permit issued under section 402 of the Act, he may, after consultation with the state in which the violation occurs, assess a civil penalty of not more than $10,000 per day of violation, except that the penalty shall not exceed a total of $125,000. The Secretary of the Army is given similar authority in connection with permits issued under section 404 of the Act, which relates to the discharge of dredged or fill material.

A civil penalty is assessed under this provision by the Administrator or the Secretary, as the case may be, by an order made on the record after opportunity for a hearing. Before issuing such an order, the Administrator or the Secretary is required to give written notice to the person to be assessed the civil penalty of the proposal to issue such an order and is required to provide the person with an opportunity to request, within 15 days, a hearing on the order. Public notice and reasonable opportunity to comment must also be provided.

Any person who comments on a proposed assessment shall be given notice of any hearing held and any order asssessing a penalty. In any such hearing, the person shall have a reasonable opportunity to present evidence.

If no hearing is held before the issuance of an order assessing a penalty, any person who commented on the proposed assessment may petition the Administrator or Secretary to set aside the order and to provide a hearing on the penalty. The Administrator or Secretary must set aside the order and provide a hearing if the Administrator or Secretary determines that the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order. If the Administrator or Secretary denies a hearing, the Administrator or Secretary shall provide to the petitioner, and publish in the Federal Register, notice of the reasons for the denial.

Any person who requested a hearing with regard to the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of the order with the United States Court of Appeals for the District of Columbia Circuit or for any other Circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making the assessment was issued.

If any person fails to pay an assessment of his civil penalty, after the order making the assessment has become a final order, and where the person does not file a petition for judicial review of the order, or after the court has entered a final judgment in favor of the Secretary or the Administrator, the Attorney General shall recover the amount assessed in an action brought in any appropriate District Court of the United States. A penalty for late payment of a fine is provided.

The Administrator and the Secretary are given the authority to issue subpoenas in connection with hearings under this provision and may request the Attorney General to bring an action to enforce any subpoena.

Any violation with respect to which any civil penalty is imposed under this provision is not subject to a civil penalty under section 309(d) or section 311(b) of the Federal Water Pollution Control Act.

When a state has proceeded with an enforcement action relating to a violation with respect to which the Administrator or the Secretary is authorized to assess a civil penalty under this provision, the Administrator and the Secretary are not authorized to take any action under this subsection if the state demonstrates that the state-imposed penalty is appropriate.

No action by the Administrator under section 24 shall affect any person's obligation to comply with any section of the Act or with the terms and conditions of any permit issued pursuant to section 402 or 404 of the Act.

The citizen suits provision in section 505(b)(1) of the Federal Water Pollution Control Act is amended to provide that no action can be commenced by a citizen if the Administrator or state has commenced and is diligently pursuing the assessment of a civil penalty. The same prohibition applies in existing law to those instances where the Administrator or a state is diligently pursuing a civil or criminal action.

In determining the amount of an administrative civil penalty, the Administrator or Secretary must take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, economic savings (if any) resulting from the violation, and such other matters as justice may require.

The maximum administrative penalty that may be assessed in an administrative enforcement action under this provision is $125,000.

The amendment provides that civil penalties under other provisions of the law shall not apply where a person has paid an administrative penalty for the same violation.

The amendment provides that where an administrative penalty is being pursued, a citizen suit may not be filed for the same violation.

A citizen suit is barred not only by an EPA administrative action but also by a State proceeding under a comparable State law.

CRIMINAL PENALTIES

The amendment amends section 309 of the Federal Water Pollution Control Act to provide penalties for dischargers or individuals who knowingly or negligently violate or cause the violation of certain of the Act's requirements.

Punishment by fine of between $2,500 and $25,000 per day, or imprisonment for up to a year, or both, is required with respect to (1) any person who negligently violates section 301, 302, 306, 307, 308, 318, or 405 of the Federal Water Pollution Control Act, or any permit condition or limitation implementing any of these sections in an NPDES permit, or any requirement imposed in an approved pretreatment program, or any requirement in a dredge and fill permit under section 404 of the Act; or (2) any person who negligently introduces into a sewer system or a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage or which causes the treatment works to be in violation of its NPDES permit requirements. Second and subsequent violations shall be punished by a fine of not more than $50,000 per day, or by imprisonment of up to two years, or both.

The House amendment also requires punishment by fine of between $5,000 and $50,000 per day, or imprisonment for up to two years, or both, for (1) any person who knowingly violates section 301, 302, 306, 306, 308, 318, or 405 of the Act, or any permit condition or limitation implementing any of these sections in an NPDES permit, or any requirement imposed in an approved pretreatment program, or any requirement in a dredge and fill permit under section 404 of the Act; or (2) any person who knowingly introduces into a sewer system or a publicly owned treatment works any pollutant or hazardous substances which causes or may reasonably be anticipated to cause personal injury or property damage or which causes the treatment works to be in violation of its NPDES permit requirements. As with negligent violations, for subsequent knowing violations, the maximum punishment which may be imposed for these knowing violations is twice that pertaining to the initial violation.

The House amendment provides for a fine or imprisonment of any person who knowingly violates provisions of the act or permit conditions knowing that he thereby places another person in imminent danger of death or serious bodily injury.

The House amendment provides, for both of these negligent or knowing violations, an affirmative defense that the introduction of any pollutant or hazardous substance into the sewer system or treatment works was in compliance with all applicable Federal, State and local requirements governing the introduction.

Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under the Act shall upon conviction be punished by a fine of up to $10,000 or imprisonment for up to two years, or both. Second and subsequent convictions shall be punished by fine of up to $20,000 or by imprisonment of up to four years, or both.

For the purpose of section 22, the term "person" means any responsible corporate officer in addition to the definition of the term in section 502(5) of the Federal Water Pollution Control Act. The term "hazardous substance" means any substance designated pursuant to section 311 of the Federal Water Pollution Control Act;

any element, compound, mixture, solution, or substance designated under section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act; any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act; and any imminently hazardous chemical substance or mixture with respect to which the Administration has taken action pursuant to section 7 of the Toxic Substances Control Act.

Conference substitute

The confernece substitite combines provisions from the Senate bill and House amendment to provide increased penalties for civil and criminal violations of the law and to provide new authority to assess civil penalties administratively.

For all three classes of penalties covered by the conference substitute—criminal, judicial civil, and administrative civil—the conference substitute provides that a single operational upset which leads to simultaneous violations of more than one pollutant parameter in an NPDES permit shall be treated as a single violation.

The conference substitute provides for criminal penalties as set forth in the Senate bill, with an amendment contained in the House bill deleting the reference to section 303.

Civil judicial penalties are as set forth in the Senate bill with amendments based on the House amendment. The conference substitute provides that no State shall be required, before July 1, 1988, to modify a section 402 permit program as a result of the civil penalty amendments in the conference substitute. With respect to civil penalties for violation of a pretreatment program, the provision of the Senate bill regarding State permit programs is retained, but with a July 1, 1988, date. With respect to the increased amount of civil penalties, the House amendment providing that no State shall be required, as a result of these amendments, to modify a permit program is adopted with the addition of a clarification. The additional language preserves the Administrator's authority to establish, for purposes of program delegation, minimum acceptable levels of State civil penalty authorities.

The new authority to assess administrative civil penalties combines provisions of the Senate bill and the House amendment. As in the Superfund Amendments and Reauthorization Act of 1986, the conference substitute provides for a two-tiered penalty authority. The first tier invloves an informal process with relatively low penalty limits. The maximum first tier penalty that may be assessed in any enforcement action is $25,000, regardless of the number of violations or number of days of violation. The second tier is subject to a maximum penalty limit of $125,000 and a formal Administrative Procedure Act hearing process attached.

The conference substitute authorizes the Secretary of the Army to levy administrative civil penalties, as provided in both the Senate bill and the House amendment, for Clean Water Act violations relating to permits issued by the Secretary under Section 404 of the Act. The conference substitute authorizes the Administrator, as in the Senate bill, to issue administrative civil penalties with respect to section 404 of the Act and violations of State-issued section

404 permits. It is the conferees' intention that the Administrator and the Secretary of the Army develop a memorandum of agreement concerning the implementation of this new administrative civil penalty authority relating to unpermitted section 404 violations. The conferees expect the Administrator and the Secretary to reach agreement on this matter as soon as possible, but in no event later than six months after the date of enactment.

In the administrative penalties provision, language is included from the House amendment on required consultation with States prior to assessing any administrative penalties, on assessment of additional penalties for late payment and collection fees, and on the standard for setting aside a penalty assessed without a hearing. From the Senate bill, language on collection procedures and court authority to impose additional penalties is included in the conference substitute, as is the language on preclusion of citizen suits.

For any given violation, the government must choose from among the three approaches included in this section: informal administrative process; formal administrative process; or judicial process. A single violation shall not be subject to multiple civil penalties.

In certain instances settlements of fines and penalties levied due to NPDES permit and other violations have been used to fund research, development and other related projects which further the goals of the Act. In these cases, the funds collected in connection with these violations were used to investigate pollution problems other than those leading to the violation. Settlements of this type preserve the punitive nature of enforcement actions while putting the funds collected to use on behalf of environmental protection. Although this practice has been used on a selective basis, the conferees encourage this procedure where appropriate.

CLEAN LAKES

Senate bill

The Senate bill provided for effective reporting of lake quality by State agencies on a regular basis. Reports were to identify lakes in each State, identify lakes with impaired uses, and include a description of the State program for lake protection.

To avoid unnecessary reporting burden, the lake quality reports were to be included in the State water quality report prepared every two years under section 305(b) of the Act. Also, a State must prepare and submit a lake quality report to EPA in order to receive a grant under section 314 of the Act.

Finally, section 314 was amended to include saline lakes under the Clean Lake Program.

House amendment

The House amendment provided for a new grant program for control of nonpoint sources contributing pollution to lakes. A total authorization of $250,000,000 was provided.

In addition, the amendment authorized the Administrator to carry out a demonstration program to restore the biological integrity of acidified lakes through liming. The provision provided for a report to Congress and an authorization of $10,000,000.

The amendment also provided for a program of grants to States to carry out methods of mitigating the effects of high acidity in lakes. A total authorization of $125,000,000 was provided and an annual report to the Congress was required.

The amendment also provided for projects for the clean-up of selected lakes.

Finally, the amendment provided for publication of a lake restoration guidance manual.

Conference substitute

The conference substitute includes modified provisions of Senate and House bills.

The Conferees reaffirm their belief that lakes are a vital national resource. Fifty percent of the Nation's water supply comes from lakes and lakes offer outstanding recreational opportunities. There is evidence, however, of declines in lake quality. A recent survey by the North American Lakes Management Society found that 4,200 lakes in 38 States suffer impaired uses.

Despite this evidence there is currently no comprehensive and complete picture of the quality of lakes nationally. In addition, there is no clear description of trends in lake quality.

The conference substitute provides that States are to submit reports on lake quality on a biennial basis. Reports are to provide a list and description of the quality of lakes and a description of methods and procedures to control sources of pollution to lakes including methods and procedures to mitigate the harmful effects of high acidity, including innovative methods of neutralizing, restoration of buffering capacity, and the like. State reports shall be included in reports proposed under section 305(b) of the Act, beginning with the report required by April 1, 1988. The provision provides that States not submitting reports are not eligible for grants under this section.

Not later than 180 days after receipt of biennial reports from States, the Administrator shall submit to Congress a report on the status of water quality in lakes. This national report is intended to be published separately from the report to Congress prepared under section 305(b) of the Act.

The provision also provides that the Administrator is to establish and conduct a lake water quality demonstration program. As a priority, the Administrator shall undertake demonstration projects at several lakes identified in the bill. The Administrator is to provide an annual report to the Congress on work undertaken pursuant to this section. The demonstration program is supported by a total authorization of $40,000,000. An additional authorization of $15 million is provided for acid mitigation. Award of a grant under this provision shall not effect or restrict award of grants under related assistance programs.

The conference substitute also directs the Administrator to develop a lake restoration guidance manual within one year and to revise the manual biennially.

MANAGEMENT OF NONPOINT SOURCES OF POLLUTION

Senate bill

The Senate bill provides $300 million over 3 years to States and combinations of adjacent States to implement nonpoint source pollution management programs.

States are to submit to the Administrator of the Environmental Protection Agency, within 18 months of enactment, programs which: identify waters which without additional action to control nonpoint sources of pollution cannot reasonably be expected to attain or maintain applicable water quality standards or the goals and requirements of the Act; categories, subcategories or, where appropriate, particular sources that contribute significant pollution loadings; best management practices which will be undertaken; programs (including nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) to achieve implementation of best management practices; a schedule containing annual milestones for program implementation at the earliest practicable date; and which identify Federal programs and projects which the State will review pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983, to determine whether such assistance is consistent with the purposes and objectives of the program under this section.

Within 6 months of receipt, EPA is to approve or disapprove the program; states have 3 months to revise the program, and the Administrator an additional 3 months to approve or disapprove the revised program. If the Administrator fails to approve or disapprove the program within the allotted times, the program is deemed to have been approved.

The State may make use of local agencies or organizations in developing and implementing the program.

The Federal share of grants shall not exceed 75%. Two-thirds of the funds appropriated are to be allotted by formula, one-third for priority purposes.

States may use Federal funds authorized by the bill for financial assistance to individuals only insofar as the assistance is related to costs of implementing demonstration projects. Federal funds are not to be used as a general subsidy or for general cost sharing to support implementation of best management practices. However, a State is not precluded from using or directing other funds for cost sharing or other incentive programs if it chooses. The term "demonstration projects" includes projects designed to educate individuals as to the use of best management practices and to demonstrate their feasibility and utility as well as research projects to establish the cost effectiveness of particular BMPs.

Each State shall report annually to the Administrator. The Administrator shall transmit to the Office of Management and Budget and appropriate Federal departments and agencies a list of the programs and projects identified by each State under the consistency provision, and each Federal department or agency shall modify its regulations and accommodate the concerns of the state according to the requirements and definitions of Executive Order 12372 as in effect on September 17, 1983.

The Administrator shall submit to Congress within 3 years of enactment a report on the program.

Section 205(j) is amended to contain a new paragraph (5), setting aside 1% of each state's allotment, or $100,000, whichever is greater, to carry out this section.

House amendment

Establishes a national policy that plans for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this Act to be met through the control of both point and nonpoint sources of pollution.

Provides $150 million per year over 5 years to States to implement nonpoint source control programs.

Each State shall submit to the Administrator a State Assessment Report which includes an identification of those waters which as a result of pollution from nonpoint sources are not meeting applicable water quality standards or the goals and requirements of the Act, and those categories and subcategories of nonpoint sources which add significant pollution to those waters. Each State shall also submit a four-year Implementation Plan which includes an identification of those waters with respect to which the State plans to implement best management practices and measures; the schedule for expeditious implementation of such practices and measures; those categories and subcategories with respect to which controls will be implemented; an identification of best management practices to be implemented; and an identification of methods (including but not limited to demonstration, enforcement, technical assistance, education, training and cost sharing programs) which will be used. The State shall also identify Federal departments and agencies which are likely to engage in activities which would be inconsistent with implementation of the plan, and recommend to the Administrator methods for modifying such activities to make them consistent with plan implementation.

Programs shall be developed and implemented, to the maximum extent practicable, with the involvement of local and other entities with expertise and experience in control of nonpoint sources of pollution. The States shall to the maximum extent practicable develop and implement programs on a watershed-by-watershed basis.

States have 270 days from enactment to submit the above, with an additional 270 days if necessary. The Administrator shall consolidate recommendations for modification of Federal activities and programs, and submit them to the appropriate Federal departments, agencies and instrumentalities which shall, to the maximum extent practicable and consistent with existing law, accommodate such recommendations. The Administrator shall have 180 days to approve or disapprove the submissions, or portions of them, or they shall be deemed approved. The Administrator may disapprove a plan or portion of it upon determination, among other considerations, that it is not likely to satisfy the goals and requirements of the Act, that the implementation schedule is not sufficiently expeditious, or that the practices and measures proposed in the plan are not adequate to improve water quality and to reduce nonpoint source pollution. States have 90 days to revise their plans. If a State fails to submit a plan, or if it is not approved, a local public agency or organization with expertise in and adequate authority to control nonpoint sources may with the State's approval submit and implement a plan for its area under the same conditions as States do.

Where waters in a State with an approved plan are not meeting applicable water quality standards or the goals and requirements of the Act, because of upstream pollution, the State may petition EPA to convene and EPA shall convene, or EPA may initiate, an interstate management conference to develop an agreement. The involved states shall revise their plans and submit them to EPA for approval. The plans shall be consistent with Federal and State law.

The maximum Federal share shall be 50%, except where a significant number of local interests in an area are willing and able to participate, in which case the Federal share shall be between 50% and 60%.

States shall submit annual reports to EPA, and EPA shall report annually to Congress on the program. Not later than July 1, 1990 the Administrator shall submit a final report to the Congress.

Section 201(g)(1) is amended to permit use to these funds to implement this section.

Conference substitute

The conference substitute establishes a national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this Act to be met through the control of both point and nonpoint sources of pollution.

The provision provides $400 million over 4 years to States or combinations of adjacent States to implement nonpoint source management programs. An authorization for grants to States to carry our ground water quality protection activities as part of a comprehensive nonpoint source pollution control program; is also provided.

Each State is required to submit a report which identifies State waters which without additional action to control nonpoint sources of pollution cannot reasonably be expected to attain or maintain applicable water quality standards or the goals and requirements of the Act. A particular water body or segment should not be excluded from identification under this subsection on a theoretical showing that it would be possible to meet water quality standards without nonpoint source controls. "Reasonably expected" is intended to mean that all waters for which nonpoint controls would be an appropriate and effective means to achieving water quality standards will be identified in the State's report.

The report shall also include identification of and management practices for categories and subcategories of nonpoint sources and may include, where appropriate, particular nonpoint sources which add significant pollution to each portion of the identified waters. It would be appropriate to identify such particular sources where they contribute significant nonpoint pollution to water not meeting water quality standards.

States or combinations of adjacent States shall also prepare and submit to EPA Management Programs for implementation, which shall include an identification of best management practices and measures which the State will undertake. When identifying best management practices for categories and subcategories which will be undertaken to reduce nonpoint pollution, it is appropriate for States to focus on specific categories and subcategories or watersheds where nonpoint pollution is a signifcant problem and to set priorities among categories, subcategories and watersheds. Setting priorities, however, should not be construed to allow States to exclude watersheds not meeting water quality standards, or categories or subcategories contributing significant nonpoint pollution, from the report and management program submitted by the State.

The management programs shall also identify the programs (including, as appropriate, nonregulatory or regulatory programs for enforement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) to achieve implementation of best management practices; a schedule containing annual implementation milestones and providing for utilization of best management practices at the earliest possible date; and an identification of Federal programs and projects which the State will review pursuant to the procedures set forth in Executive Order 12372, as in effect on September 17, 1983, to determine whether such assistance is consistent with the purposes and objectives of the program under this section. Programs shall be developed and implemented, to the maximum extent practicable, with the involvement of local and other entities with expertise and experience in control of nonpoint sources of pollution. States shall, to the maximum extent practicable, develop and implement programs on a watershed-by-watershed basis.

The States shall submit their reports and management programs to EPA within 18 months of enactment. The Administrator must approve or disapprove the submissions within 180 days or they are deemed approved. The Administrator may disapprove a program or portion of it upon determination, among other considerations, that it is not likely to satisfy the goals and requirements of the Act, or that the practices and measures proposed in the plan are not adequate to reduce nonpoint source pollution and to improve water quality. The State shall have 3 months to revise its plan and the Administrator shall approve or disapprove the revised program within 3 months. If a state fails to submit the report, or if it is not approved, a local public agency or organization with expertise in and authority to control nonpoint sources may, with the approval of the State, develop and implement a program for its area.

Where waters in a State with an approved program are not meeting applicable water quality standards or the goals and requirements of the Act because of upstream pollution, the State may petition EPA to convene and EPA shall convene, or EPA may initiate, an interstate management conference to develop an agreement. Nothing in the agreement shall supersede or abrogate water rights established by interstate water compacts, Supreme Court decrees or State water laws. Nor shall the subsection apply to any pollution subject to the Colorado River Basin Salinity Control Act. The requirement that the Administrator convene a conference shall not be subject to Section 505 of this Act. To the extent that States reach agreement through the conference, their management programs will be revised to "reflect" agreements reached at an interstate management conference. It is intended that the agreements will be incorporated in revised state programs and will be carried out. Management programs shall be consistent with Federal and State law.

In making grants under this provision, the Administrator shall give priority to effective mechanisms which will control particularly difficult nonpoint source problems; implement innovative methods or practices; control interstate nonpoint source pollution; or carry out ground water quality protection activities.

The Federal grant share shall not exceed 60% of the implementation costs, and non-Federal sources shall provide at least 40% of the costs.

States may use Federal funds authorized by the bill for financial assistance to individuals only insofar as the assistance is related to costs of implementing demonstration projects. Federal funds are not to be used as a general subsidy or for general costs sharing to support implementation of best management practices.

No grant may be made unless the Administrator determines that the State has made satisfactory progress in the preceding year in meeting its schedule.

Each State shall submit annual progress reports to the Administrator. The Administrator shall transmit to the Office of Management and Budget and appropriate Federal departments and agencies a list of the programs and projects identified by each State under the consistency provision, and each Federal department or agency shall modify its regulations and accommodate the concerns of the State according to the requirements and definitions of Executive Order 12372 as in effect on September 17, 1983.

The Administrator shall report annually to Congress on the activities, programs and progress made in the preceding year, and shall transmit a final report not later than January 1, 1990 on the activities carried out under this section.

The conference substitute contains both the Section 205(j)(5) and Section 201(g)(1) set-aside provisions.

GRANTS FOR PROTECTING GROUND WATER QUALITY

Senate bill

No comparable provision.

House amendment

The House amendment authorizes the Administrator to make 50 percent grants to States for the purpose of assisting the States in carrying out ground water quality protection activities.

Conference substitute

The conference substitute includes a comparable provision in the new nonpoint source pollution section.

NATIONAL ESTUARY PROGRAM

Senate bill

The bill adds a new section 320 which authorizes the Administrator to convene management conferences to solve pollution problems in interstate and international estuaries. Under the provisions, EPA would convene a management conference if the Administrator determines that the attainment and maintenance of water quality in an estuary requires the control of interstate or international pollution.

The management conferences would be convened for up to five years and would develop comprehensive conservation and management plans which recommend priority actions for the control of point and nonpoint sources of pollution. These conferences shall include representatives of international, interstate, and regional agencies; state and local governments and entities; interested Federal agencies; affected industries, public and private educational institutions and the general public and private educational institutions and the general public in the estuarine zone. It is important to note, however, that any priority corrective actions or compliance schedules recommended by the conference shall in no manner be less stringent than any requirements of Federal law. Nothing in this section shall affect compliance schedules or other requirements established by law or by the Agency for municipal, industrial or other discharges.

The Administrator shall approve the plan if it satisfies the purposes of section 320, and the affected Governor or Governors concur. Once a plan is approved, funds authorized to be appropriated under the title II construction grants program, the title VI water pollution control revolving loan program and the section 319 nonpoint source pollution program may be used in accordance with the applicable requirements of the Act, to assist states in implementing programs. This provision does not in any way preclude the use of funds for any eligible project under title II, title VI or section 319 of the Act.

The provision authorizes $12 million annually for the management conference. Expenses related to the administration of management conferences are not to exceed 10% of amounts appropriated. Grants are provided on a 75 percent Federal, 25 percent non-Federal basis to states, interstate or regional water pollution control agencies to conduct research, monitoring, modeling and other technical work necessary to develop conservation and management plan. Those agencies which receive grants are required to report to the Administrator 18 months after receipt of the grant and biennially thereafter.

The Administrator is directed to provide not to exceed $5,000,000 per fiscal year of the authorized funds to the Administrator of NOAA to do water quality monitoring and ecosystem assessment research in the estuaries. The Administrator of EPA, in cooperation with the Administrator of NOAA, shall submit a biennial report to Congress on the results of such monitoring and research. This report shall provide a listing of priority monitoring and research needs; and assessment of the state and health of the Nation's estuarine zones to the extent evaluated; a discussion of pollution problems and trends in pollutant concentrations that have a direct or indirect effect on water quality, the ecosystem; and designated or potential uses of each estuarine zone; and evaluation of pollution abatement activities and management measures implemented to determine the degree of improvement made toward restoring and maintaining the chemical, physical, and biological integrity of the estuaries studied.

House amendment

The House amendment establishes a program to improve water quality in estuaries. EPA is authorized to convene management conferences on estuaries in order to develop master plans for the improvement of the environmental quality of estuaries. The participants in the conference include EPA, NOAA, and the States. Fifty percent grants are authorized for implementation of the master plans.

Conference substitute

The conference substitute contains purposes and policies of the National Estuary Program which declare that the Nation's estuaries are of great national significance for fish and wildlife resources and provide important recreation and economic opportunities. As such, it is national policy to maintain and enhance the water quality in estuaries and provide for the biological integrity of these waters.

A Governor of a State may nominate an estuary which lies in whole or in part within such State and request a management conference to develop a comprehensive management plan. The Administrator is also authorized to nominate an estuary under his own initiative. In either case, the Administrator must make a determination as to whether an estuary can be included in the program on the basis of the ecological significance of the estuary; the biological productivity of the estuary and its contribution to fish and wildlife resources of commercial and recreational significance; the degree to which commercial, residential, recreational, or industrial activities within the estuary and its watershed have impaired or may impair the health and ecological integrity of the estuary; and the degree to which comprehensive planning management may contribute significantly to the wise use of the estuary and to its health and ecological integrity.

Although the national estuary program established in this legislation is national in scope, several estuaries are listed in the conference substitute for priority consideration. These estuaries, which are of national significance, are as follows:

> Long Island Sound, New York and Connecticut; Narragansett Bay, Rhode Island; Buzzards Bay, Massachusetts; Puget Sound, Washington; New York-New Jersey Harbor, New York and New Jersey; Delaware Bay, Delaware and New Jersey; Delaware Inland Bays, Delaware; Albermarle Sound, North Carolina; Sarasota Bay, Florida; San Francisco Bay, California; and Galveston Bay, Texas.

The management conferences are, among the other purposes stated in the conference substitute, required to develop comprehensive conservation and management plans which recommend priority corrective actions and compliance schedules addressing point and nonpoint sources of pollution to restore and maintain the chemical, physical, and biological integrity of the estuary. This includes restoration and maintenance of water quality, a balanced indigenous population of shellfish, fish and wildlife, and recreational activities in the estuary. Plans shall assure that the designated uses of the estuary are protected. Another important responsibility of the management conferences is to review any Federal financial assistance program or Federal development project subject to the requirements of Executive Order 12372, as in effect on September 17, 1983, to determine whether such assistance program or project would be consistent with and further the purposes and objectives of any plan prepared under this section. These programs and projects shall not be limited to the assistance programs or development projects subject to Executive Order 12372, but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of any plan developed by the management conference.

Members of the management conference shall include the Administrator and representatives of State and foreign governments, appropriate interstate or regional agencies and as determined by the Administrator other appropriate Federal agencies, local governments, affected industries, public and private education institutions and the general public. Management conferences shall be convened for a period up to five years and may be extended or reconvened by the Administrator.

Management conferences shall consider any relevant special area management plan under the Coastal Zone Management Act. The estuarine management conferences shall also cooperate fully with the State coastal management program agencies so as to assure effective coordination of all relevant coastal activities affecting the estuary. When appropriate, approved estuarine conservation and management plans may be incorporated into State coastal zone management programs.

The plan developed by a management conference shall include requirements necessary for attainment of water quality in estuaries and may include, but not be limited to:

The development of water quality standards for waters within the estuarine zone.

The development of toxicity-based standards for toxic pollutants.

The development of water quality based standards for significant point sources pollution.

The development of best management practices to control nonpoint sources of pollution.

Other measures providing for the conservation and management of the living resources of the estuary.

Once plans are approved by the Administrator with the concurrence of the affected Governor or Governors, the plan shall be implemented. Funds authorized under titles II and VI and section 319 may be used to assist States with implementation of plans.

The Administrator is authorized to make grants to appropriate public and private agencies, institutions, or individuals to assist in research, surveys, studies, modeling and other technical work necessary for the development of a conservation and management plan. The amount of such grants shall not exceed 75 percent and shall be made on condition that the non-Federal share of such costs are provided from non-Federal sources. Any entity or person receiving a grant shall report to the Administrator within 18 months of receipt of such grant and biennially thereafter.

The authorization under this section shall not exceed $12 million per year for fiscal years 1987, 1988, 1989, 1990, and 1991. Up to $5 million per fiscal year of the sums authorized to be appropriated under the section shall, at the Administrator's discretion, be provided to the Administrator of the National Oceanic and Atmospheric Administration (NOAA) to do water quality monitoring and ecosystem assessment in estuaries.

The Administrator, in cooperation with the Administrator of NOAA is required to submit a biennial report to Congress on the results of such monitoring and research. This report shall provide an assessment of the state and health of the Nations' estuarine zones to the extent evaluated; a discussion of pollution problems and trends in pollutant concentrations that have a direct or indirect effect on water quality, the ecosystem, and designated or potential uses of each estuarine zone; and evaluation of pollution abatement activities and management measures implemented to determine the degree of improvement made toward restoring and maintaining the chemical, physical, and biological integrity.

The definition of estuaries includes associated aquative ecosystems and those portions of tributaries draining into the erstuary up to the historic height of migration of anadromous fish or the head of tidal influence, whichever is higher. The definition was specifically included in this section to ensue that management conferences addressed problems created by the degradation of wetland areas or upstream diversions of water from tributaries draining into the estuary. The definition of "estuarine zone" in section 104(n)(4) continues to apply to other provisions of the Act.

PUGET SOUND

Senate bill

No comparable provision.

House amendment

The House amendment provides for the development of a comprehensive master plan for Puget Sound, Washington. Fifty percent grants are authorized for implementation of the plan.

Conference substitute

The conference substitute deletes this separate House provision and addresses Puget Sound in the National Estuary Program.

SAN FRANCISCO BAY

Senate bill

No comparable provision.

House amendment

The House amendment authorizes the Administrator to study and develop information on the quality of San Francisco Bay, develop a master plan to reduce pollution loadings in the bay, and to make grants for implementation of the plan.

Conference substitute

The conference substitute deletes the separate House provision and addresses the San Francisco Bay in the National Estuary Program.

NEW YORK AND NEW JERSEY HARBOR AREA

Senate bill

No comparable provision.

House amendment

The House amendment authorizes EPA to assist in the study of environmental problems in the New York and New Jersey harbor areas, and to make 50 percent grants for implementation of plans to improve the area.

Conference substitute

The conference substitute deletes this separate House provision and addresses the New York and New Jersey Harbor area in the National Estuaries Program.

UNCONSOLIDATED QUATERNARY AQUIFER

Senate bill

No comparable provision.

House amendment

The House amendment provides that no person may locate or authorize the location of a landfill, surface impoundment, waste pile injection well or land treatment facility over the unconsolidated quaternary aquifer in New Jersey.

Conference substitute

The conference substitute adopts the House provision.

STORMWATER RUNOFF FROM OIL, GAS, AND MINING OPERATIONS

Senate bill

The Senate bill adds a new paragraph to section 402(l) of the Clean Water Act, specifically exempting certain stormwater runoff discharges from permit requirements and effluent limitations. Discharges from oil or gas exploration, production, processing, or treatment operations are covered by this provision. To be exempted, such discharges must be composed entirely of flows of precipitation, runoff from conveyances or systems of conveyances used for collecting and conveying such water. Such flows cannot be contaminated with process wastes, toxic pollutants hazardous substances, or oil and grease. The Administrator shall determine what constitutes contaminated runoff for the purposes of this subsection.

House amendment

The House amendment provides that the Administrator shall not require a permit under section 402 or directly or indirectly require any state or require such a permit for discharges of stormwater runoff which (1) are from mining operations or oil gas exploration, production, processing, or treatment operations, (2) are composed entirely of flows from conveyances or systems of conveyances used for collecting and conveying precipitation run-off; and (3) do not come in contact with any over-burden, raw material, or product located on the site.

Any person discharging stormwater run-off described in the preceding sentence shall monitor the quality of water in such flows and shall report not less often than annually to the Administrator on the results of such monitoring.

Conference substitute

The conference substitute adopts the House provision, eliminating the separate monitoring requirement and adding a provision dealing with contamination by contact with raw materials or waste products based on the Senate bill.

The substitute provides that permits are not required where stormwater runoff is diverted around mining operations or oil and gas operations and does not come in contact with overburden, raw material, product, or process wastes. In addition, where stormwater runoff is not contaminated by contact with such materials, as determined by the Administrator, permits are also not required. With respect to oil or grease or hazardous substances, the determination of whether stormwater is "contaminated by contact with" such materials, as established by the Administrator, shall take into consideration runoff in excess of reportable quantities under section 311 of the Clean Water Act or section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, or in the case of mining operations, above natural background levels.

ADDITIONAL PRETREATMENT OF CONVENTIONAL POLLUTANTS NOT REQUIRED

Senate bill

In cases where a publicly owned municipal treatment works is not able to meet the requirements of its permit because of operational, mechanical, or design failures, the Administrator should not require pretreatment of conventional pollutants by indirect discharges to allow the treatment works to meet the conditions of their permits. This provision does not modify or limit the Administrator's authority and obligation to promulgate pretreatment standards which regulate pollutants which interfere with a publicly owned treatment works. It does not affect a discharger's obligation to comply with Federal, State, and local pretreatment requirements. The Administrator's enforcement authorities against indirect dischargers or municipalities under the Act are not limited by this provision. Nor does it restrict a POTW from imposing any treatment conditions it chooses on its contributors.

House amendment

The House amendment provides that, in issuing a permit to a publicly owned treatment works, the Administrator shall not require additional pretreatment by any indirect discharger of conventional pollutants introdued into the treatment works as a substitute for inadequate pollution removal by the treatment works due to design or operation problems for which the treatment works is responsible. Indirect dischargers into the works must still comply with all applicable pretreatment standards promulgated under the Federal Water Pollution Control Act. Nothing in this subsection affects the Administrator's authority under sections 307 and 309 of the Act, affects state and local authority under section 307(b)(1) (pretreatment programs) or section 510 (state authority to establish limitation on discharges of pollutants), relieves the treatment works from its obligations to meet requirements of the Act, or otherwise precludes the treatment works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit.

Conference substitute

The conference substitute adopts the House provision.

PARTIAL NPDES PROGRAM

Senate bill

The Senate bill amends section 402 of the Clean Water Act to permit the Administrator of the Environmental Protection Agency to delegate a portion of the National Pollutant Discharge Elimination System program to a State under conditions.

A State would have two options. Under either option, the Governor must submit a plan to the EPA for approval. Such a plan must either show that the State is prepared to administer program components representing a significant part of the State program, and be prepared to make all reasonable efforts to assume administration of the total program within the ensuing five years, or the plan must provide for administration of a permit program for all of one or more discharge categories. Under this option, the plan must cover all categories of discharges and represent a complete permit program for all categories of discharge under the jurisdiction of the State.

In the event that a State wishes to return NPDES program administration authority to the Federal Government, or in the event the Administrator withdraws approval of a State-operated program, the entire program must be returned to the Federal Government.

House amendment

The House amendment amends section 402 of the Federal Water Pollution Control Act by adding new subsection (n). New subsection (n) allows partial delegation to the States of the Act's NPDES program. Under this provision, the Governor of a State may submit and the Administrator may approve a partial permit program for point source discharges into the navigable waters of the State where the State's partial permit program covers, at a minimum, either administration of a major category of the discharges into the State's navigable waters or a major component of the State's NPDES permit program. With respect to a partial permit program covering administration of a major category of discharges, the Administrator is authorized to approve such a program if the program covers in a complete fashion all of the discharges under the jurisdiction of a department or agency of the State and if the Administrator determines that the partial program represents a significant and identifiable part of the State's NPDES program. Under partial delegation and assumption, States with point source jurisdiction split among two or more State agencies could apply for all of the point sources under the jurisdication of a single State agency. Upon approval, the State agency could assume full administration of all point sources within that agency's jurisdiction and responsibility. Such State agency could assume and administer its part of the total NPDES program regardless of whether other State agencies with jurisdication over other parts of the total program assumed administration of their respective parts.

With respect to a partial and phased permit program covering a major component of the State's NPDES program, the Administrator is authorized to approve such a program if the Administrator determines that the partial program represents a significant and identifiable part of the State's NPDES program, such as all major industrial dischargers of all major municipal dischargers, and if the State submits and the Administrator approves a plan for the States to assume administration by phases of the remainder of the State's NPDES program within five years. Under partial and phased assumption, the State would be required to assume all of the program within the specified period of time, but it could do so by assuming some significant part of the program each year up to the end of the specified period.

A State may return or the Administrator may withdraw approval of delegated NPDES program responsibilities. In the case of an approved partial permit program covering administration of a major category of a State's point source discharges, the entire permit program related to the category and being administered by one of the State's departments or agencies must be returned or withdrawn.

Partial programs relating to other categories and being administered by other of the State's departments or agencies, if such is the case, may remain delegated. In the case of an approved partial and phased program covering administration of a major component of a State's NPDES program, any approved phased component must be returned or withdrawn.

Conference substitute

The conference substitute adopts the House amendment with regard to partial NPDES program approval and NPDES program return. Nothing in either provision confers authority to a State to return parts of a program approved prior to the date of enactment.

ANTI-BACKSLIDING

Senate bill

The Senate bill adds new subsections to section 303 and 402 which clarify the Clean Water Act's prohibition of backsliding on effluent limitations.

The amendment to section 402 makes explicit that where a permit limitation is based on section 402(a)(1)(B), that limitation may not be made less stringent because there has been a subsequently promulgated effluent guideline that would have resulted in less stringent effluent limitations had it been used as a basis for the permit. The proposed amendment states that best professional judgment (BPJ) permits may not be made less stringent "solely" on the basis of a subsequent guideline.

Where the permittee can demonstrate that installation and adequate operation of treatment facilities has failed to achieve the permitted effluent limitation, limits in the new permit may reflect the level of control actually achieved, but shall not be less stringent than required by the effluent guidelines in effect at the time of permit issuance or renewal.

The amendment to section 402 provides that, with respect to permits developed on the basis of water quality based effluent limitations under section 301(b)(1)(c) or section 303 (d) or (e), permits may be renewed, reissued or modified on the basis of subsequently revised waste load allocation formulas (WLAs) but only if those WLAs are in compliance with section 303(d)(5).

Under new paragraph (5)(A) where the applicable water quality standard has not been attained, the total maximum daily load of pollutants or other WLA may be revised only under two circumstances. First, the cumulative effect of the revised effluent limitations based on the total maximum daily loads or WLA must assure attainment of water quality standards. Second, the daily maximum load of pollutants or the WLA may only be revised if the designated use of the receiving waters which is not being attained is changed in accordance with the water quality standards regulations established under section 303.

Under paragraph 5(B) of the new subsection, where water quality in the receiving waters exceeds or equals water quality standards or the levels needed to protect the actual or designated uses of the receiving waters, backsliding from water quality-based effluent limitations is prohibited except to the extent EPA or an approved NPDES state agency proceeds according to the procedures and applying the decision standard of the antidegradation policy established by section 303 of the Act and the proposed backsliding is found to be consistent with this antidegradation policy.

House amendment

The House amendment amends Section 402 of the Federal Water Pollution Control Act to provide that, except in specific limited circumstances, neither water quality based permits nor permits based on best professional judgment may be renewed, reissued, or modified to contain less stringent effluent limitations. Under the House amendment the only situations in which a BPJ permit may be adjusted to contain less stringent effluent limitations are where there have been material and substantial alterations to the permitted facility, persuasive new information becomes available, good cause exists due to matters outside the permittee's control, a variance request has been filed, the permittee's operation and maintenance costs are disproportionately high, mistakes of fact or law were made, or the permittee has installed and properly operated and maintained required equipment and facilities but has nonetheless been unable to meet the permit limitations. For water quality based permits, these same situations applicable to BPJ permits may lead to less stringent effluent limitations in renewed, reissued, or modified permits, except for mistakes of fact or law. In no event under the House amendment may either BPJ or water quality based permits be renewed, reissued, or modified to contain less stringent limitations than required pursuant to applicable effluent guidelines, and in no event may a water quality based permit be changed in a way that would result in a violation of an applicable water quality standard. The House provision is effective for two and one-half years, beginning on date of enactment.

Conference substitute

The conference substitute combines concepts and provisions from both the Senate and House bills, while preserving the intent underlying both bills' provisions: to preserve pollution control levels achieved by dischargers by prohibiting the adoption of less stringent treatment or control limitations, standards, or conditions than those already contained in a permit, except in certain narrowly-defined circumstances.

The conference substitute prohibits the renewal, reissuance, or modification of BPJ and water quality based permits to contain less stringent effluent limitations, except as provided in the substitute. Best professional judgment permits may be adjusted if material and substantial alterations or additions to the permitted facility occurred after issuance of the permit which justify the application of a less stringent effluent limitation; information is available which was not available at the time the permit was issued (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at that time; the Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit; a less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy; the permittee has received a permit modification under section 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a) of the Act; or the permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations.

For water quality based permits, all of the circumstances under which BPJ permits may be adjusted to reflect less stringent effluent limitations may also lead to the same result for water quality based permits, except for technical mistakes or mistaken interpretations of law.

For both BPJ and water quality based permits, when the permittee has installed and properly operated required treatment facilities but has not been able to achieve the effluent limitations required in its permit, the permit's limitations may be adjusted, but never to a level less stringent than the level of pollutant control actually being achieved and never to a level less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification.

The conference substitute also provides that neither the new information exception—for both BPJ and water quality based permits—nor the mistake of fact or law exception—for BPJ permits—allows permits to be adjusted to require less stringent effluent limitations with respect to any revised waste load allocation or any alternative grounds for translating water quality standards into effluent limitations, except in one narrow circumstance. Where the cumulative effect of a revised waste load allocation results in a decrease in the amount of pollutants being discharged into the waters covered by the allocation and the revised waste load allocation is not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of the Clean Water Act or for reasons otherwise unrelated to water quality, then the two exceptions may be used to allow permit adjustments.

With respect to water quality based permits, in addition to justification based on the limited circumstances just described, the conference substitute also provides that permits developed on the basis of water quality based effluent limitations under section 301(b)(1)(c) or section 303(d) or (e), may be renewed, reissued or modified on the basis of subsequently revised waste load allocation formulas, but only in compliance with new section 303(d)(4).

Under paragraph (5)(A) of subsection 303(d), where the applicable water quality standard has not been attained , the total maximum daily load of pollutants or other waste load allocation may be revised only under two circumstances. First, the cumulative effect of the revised effluent limitations based on the total maximum daily loads or waste load allocation must assure attainment of water quality standards. Second, the daily maximum load of pollutants or the waste load allocation may only be revised if the designated use of the receiving waters which is not being attained is changed in accordance with the water quality standards regulations established under section 303.

Under paragraph (5)(B) of the subsection, where water quality in the receiving waters exceeds or equals that required by applicable water quality standards or the levels needed to protect the actual or designated uses of the receiving waters, backsliding from water quality-based effluent limitations can only proceed according to the procedures and applying the decision standard of the antidegradation policy established by section 303 of the Act, and where the proposed backsliding is found to be consistent with this antidegradation policy.

The conference substitute establishes the general antibacksliding limitation that, with respect to both BPJ and water quality based permits, in no event may such a permit be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. Similarly, in no event may such a permit to discharge into waters be renewed, reissued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of an applicable water quality standard established under section 303 of the Clean Water Act.

Finally, the conference substitute requires the Administrator to study the extent to which States have reviewed, revised, and adopted water quality standards in accordance with section 24 of the

Municipal Wastewater Treatment Construction Grant Amendments of 1981, and the extent to which modifications of permits issued under section 402(a)(1)(B) of the Federal Water Pollution Control Act for the purpose of reflecting any revisions to water quality standards should be encouraged or discouraged. The Administrator is required to submit a report on the study, together with recommendations, to Congress not later than two years after the date of the enactment of the Water Quality Act of 1986.

MUNICIPAL INDUSTRIAL STORMWATER DISCHARGES

Senate bill

The Senator bill includes an amendment providing that, prior to October 1, 1992, the Administrator or the State (in the case of a State with a permit program approved under section 402 of the Act) shall not require a permit for discharges composed entirely of stormwater, other than (a) those associated with industrial activity or a municipal separate storm sewer, or (b) those for which the Administrator or the State determines that the stormwater discharge violates a water quality standard or is a significant contributor of pollutants to waters of the United States; and providing for a report to Congress prior to October 1, 1988.

House amendment

The House amendment establishes procedures for the regulation of stormwater discharges. For the period ending December 31, 1989, EPA may not require a permit for discharges composed entirely of stormwater runoff unless the administrator determines in the case of a class or category of discharges that the class or category may be a significant contribution of pollutants or, in the case of an individual discharge, that it violates a water quality standard or is a significant contributor of pollutants.

All discharges from municipal separate storm sewers must be regulated through the permit program.

With regard to discharges from industrial sites, within one year EPA must promulgate regulations identifying the classes and categories for which permits are required. Not later than 6 months after the study of regulation of stormwater runoff required to be undertaken by EPA, then regulations must be revised as necessary to take into account the results of the study. The study is to be submitted to Congress not later than December 31, 1987.

Conference subsitute

The conference substitute follows the Senate provision with respect to stormwater associated with industrial activities. The permit requirements of the Clean Water Act respecting such stormwater discharges are not affected by this amendment.

With respect to municipal separate stormwater discharges, the conference substitute temporarily prohibits the Environmental Protection Agency and States from requiring permits for certain municipal separate storm sewers for discharges composed entirely of stormwater, in order to provide a sufficient period of time to develop and implement methods for managing and controlling discharges from municipal storm sewers. The relief afforded by this provision extends only to October 1, 1992. After that date, all municipal separate storm sewers are subject to the requirements of sections 301 and 402.

Before October 1, 1992, relief from the permit requirement is afforded only to discharges composed entirely of storm water. Storm sewers that discharge any other type of effluent or into which pollutants are introduced by means other than incidental to stormwater runoff are required to obtain a permit.

The conference substitute establishes a schedule for developing necessary regulations and issuing permits for municipal separate storm sewers. Before the end of the four-year period beginning on the date of enactment, EPA and the States are to issue permits for all storm sewer systems serving a population of 250,000 persons or more. All permits for these systems are to be issued by the end of this four year period.

Beginning four years after enactment, EPA and the States are to issue permits for storm sewer systems serving a population of more than 100,000 persons and fewer than 250,000 persons. These permits are to be issued no later than six years from the date of enactment.

After October 1, 1992, the permit requirements of the Clean Water Act are restored for municipal separate storm sewer systems serving a population of fewer than 100,000 persons.

Subsection (o)(2)(B) requires that permits for municipal storm sewers contain a requirement to effectively prohibit non-stormwater discharges into storm sewers. Under this provision, all such permits must assure that such discharges are prohibited. The conference substitute does not specify the type of permit requirement to be used, but it does require that the permit requirement be effective in achieving prohibition of non-stormwater discharges.

Permits for discharges from municipal separate stormwater systems may be issued on a system or jurisdiction-wide basis. They must include a requirement to effectively prohibit non-stormwater discharges into storm sewers and controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and systems, design and engineering methods, and other provisions determined appropriate by the EPA or a State. These controls may be different in different permits. All the types of controls listed in subsection (o)(2)(C) are not required to be incorporated into each permit.

SEWAGE SLUDGE

Senate bill

Section 405 of the Clean Water Act is amended to establish a timetable for promulgation of toxic contaminant criteria for sewage sludge use and disposal, to establish a public health and environmental protection basis for these criteria, and to provide authority to implement and enforce criteria for toxic and other pollutants.

A new section 405(d)(2) requires the Administrator to identify by April 1, 1986, toxic pollutants which may be present in sewage sludge in concentrations which may affect public health or the environment. These toxic pollutants are those about which the Administrator currently has available information on the toxicity, persistence, concentration, mobility or potential for exposure on which to base use and disposal criteria. The criteria are to be promulgated by March 1, 1987. Toxic sludge contaminants not included on this list are to be identified by February 1, 1987, and criteria promulgated by December 15, 1987.

New section 405(d)(2)(C) requires compliance with these criteria within twelve months of their promulgation. If new pollution control technology mut be constructed, the compliance deadline is extended to two years. In recognition of the fact that some compliance deadlines for toxic contaminants in the second phase of regulation may extend to late 1989, new section 45(d)(2(E) requires the Administrator to impose permit conditions or to take other steps he deems necessary to protect against adverse effect from contaminated sludge prior to the promulgation of the required regulations.

Section 405(e) is amended to expand the applicability of the 405(d) sludge use and disposal regulations to "any person" and to broaden the scope of the section beyond publicly owned treatment works to include any treatment works treating primarily domestic sewage.

Because the current language of section 405 does not specifically define compliance mechanisms, a new subsection (f) is designed to provide for this by allowing the 405(d) guidelines to be imposed through the NPDES permit program under section 402 of the Clean Water Act, a comparable Federal permit program, or an approved State permit program. To be approved, a State's permit program must have substantive standards at least as stringent as those contained in the 405(d) guidelines. These alternative programs may be used when the Administrator determines that they will assure compliance with applicable requirements of section 405. New subsection (f)(2) authorizes EPA to issue a separate permit solely to impose section 405(d) requirements if the treatment works, such as a land treatment system, does not require a discharge permit under one of the authorities listed in subsection (f)(1) and is not covered by an appropriate State permit.

Section 405(d) guidelines that are incorporated into a Federal or State permit would be enforceable in the same manner as other permit provisions under the applicable statutory permit-issuance authority.

House amendment

The House amendment directs E.P.A. to identify toxic pollutants which may be present in sewage sludge. E.P.A. must publish regulations on acceptable management practices for sludge and establish numerical limitations for toxics in sludge. If numerical limitations are not feasible, E.P.A. may promulgate design, equipment, management practices, or operational standards.

The House amendment also authorizes E.P.A. to conduct studies, demonstration projects and public information projects designed to promote the safe and beneficial use of sewage sludge. E.P.A. may make grants to states and organizations and individuals to carry out this provision. To carry out the studies, demonstration projects and information projects, $15 million is authorized to be appropriated.

Conference substitute

The conference substitute combines the provisions of the Senate bill with those in the House amendment. It retains the original 1978 deadline for promulgation of sewage sludge regulations as in current law. The conference substitute also sets additional 1987 and 1988 deadlines for issuing these regulations. These new deadlines are intended to put E.P.A. on a schedule to correct its failure to meet the 1978 promulgation deadline in section 405 and are not intended to excuse the Agency from its failure to meet the original deadline.

Similarly, the provision requiring periodic reivew and revision of sludge regulations is intended to allow for future changes in the regulations as technical knowledge increases. It is not intended to excuse the Agency from writing comprehensive regulations on the schedule required by the conference substitute. Agency officials informed the Congress over three years ago that there were at that time sufficient data to regulate comprehensively approximately twenty of the most common toxic sludge pollutants. The conferees intend these twenty to be regulated in the 1987 regulations.

The conference substitute directs the Agency to impose conditions in individual section 402 permits incorporating criteria and limitations on sludge use or disposal or take other appropriate measures to protect public health and the environment. This provision is intended to protect public health and the environment until the Agency implements the regulations required by paragraph (2). It does not substitute for sludge regulations, so compliance with this provision does not relieve the Agency of the need to comply with paragraph (2) for purposes of both regulating sludge use or disposal and granting removal credits.

The conference substitute modifies the Senate provision by deleting an exclusion of privately owned treatment works operated in conjunction with industrial manufacturing and processing facilities. Such treatment works are covered by the Conference substitute, and their sludge is to be regulated by the same criteria as sludge from publicly owned treatment works. Similarly, the Conference substitute regulates any treatment works treating domestic sewage, not just treatment works treating "primarily" domestic sewage.

Section 307(b)(1) of the Clean Water Act provides that a publicly owned treatment works may issue removal credits to industrial users so long as sludge use or disposal in accordance with regulations under section 405 is not prevented. However, in the absence of full 405 sludge regulations, twelve publicly owned treatment works (POTW's) have obtained EPA approval to grant removal credits, and the industrial users of these POTWs may have relied on EPA's approval in planning their pollution control systems. The U.S. Court of Appeals for the Third Circuit recently invalidated the regulations on which these credits were based in *Natural Resources Defense Council, Inc.* v. *U.S. Environmental Protection Agency,* No. 84-3530 (1986).

The conference substitute prevents temporary inequities that may arise regarding industrial users in these twelve cities. It stays the effect of the part of the court's decision which addresses section

405(d) for these twelve cities until August 31, 1987, the date established by subsection (d)(2)(A)(ii) for the promulgation of sludge regulations. This will allow these cities to issue removal credits, assuming all other criteria for removal credits are met. Similarly, the court's decision is stayed for up to fourteen cities which have applications to issue removal credits pending on the date of enactment and for which EPA approves a program to issue removal credits after the date of enactment and before August 31, 1987. This interim authority may not extend beyond August 31, 1987, and neither may the Agency approve any additional program to issue removal credits until the regulations required by subsection (d)(2)(A)(ii) are published. Pursuant to subsection (d)(4), the Agency should revise the permits for these cities to incorporate the sludge criteria required by this subsection.

The court's decision is stayed only with respect to that part of the decision relating to the promulgation of regulations under section 405(d). Other bases used by the Court for invalidating the removal credit program regulations are not affected by this subsection.

Section 304(h) of the Clean Water Act requires the Administrator to promulgate guidelines establishing test procedures for the analysis of pollutants. These guidelines have been published. In light of the subsequent enactment of the water quality act of 1986 the Administrator should revise the section 301(h) guidelines to include procedures for testing for regulated pollutants in sewage sludge. Promulgation of these procedures should not delay promulgation of the regulations required by section 405(d)(2), as amended.

The purpose of removal credits under section 307(b)(1) is to allow reduced pretreatment requirements on the basis of treatment consistently achieved by the particular publicly owned treatment works. Evaporation into the air of toxic volatile organic chemicals does not constitute treatment of these pollutants. Consequently, removal credits cannot be issued for such pollutants on the basis of their evaporation from treatment works.

In making grants under subsection (g) the Administrator may assist projects related to incineration of sludge.

LOG TRANSFER FACILITIES

Senate bill

The Senate bill provides that not later than October 12, 1985, the Administrator and the Secretary of the Army shall enter into an agreement to designate a lead agency and to process permits required under section 402 and section 404 of the Act, where both sections apply, for discharges associated with the construction and operation of log transfer facilities.

House amendment

The House amendment sets forth a regulatory procedure for log transfer facilities which are required to have a permit under both section 402 and section 404. Where a section 404 permit (discharge of dredged or fill material) has been obtained EPA is to determine, after opportunity for a public hearing, whether the section 404 permit satisfies other requirements of the act. If this is the case, a section 402 permit (discharges of pollutants) need not be applied for. If EPA determines that these other requirements are not satisfied, EPA proposes permit modifications to the Secretary of the Army. If the modifications are not made, then EPA requires that a section 402 permit be obtained.

Conference substitute

LOG TRANSFER FACILITIES

The conference substitute adopts the Senate provision, with modifications.

The Memorandum of Agreement between the Department of the Army and the Environmental Protection Agency contemplated by this section was entered into on October 22, 1985. This agreement represents a promising high degree of early and continuing cooperation between the agencies and the private sector and a proper reliance on their joint efforts in developing Alaska Timber Task Force log transfer facility guidelines. The terms and conditions of permits subject to this section are to be implemented and enforced in accordance with the appropriate statutory authority of the respective federal agencies.

AUDITS

Senate bill

No comparable provision.

House amendment

The House amendment provides that for the purpose of carrying out audits and examinations with respect to recipients of Federal assistance under the Act, the Administrator is authorized to enter into noncompetitive procurement contracts with state audit organizations. These contracts may only be entered into to the extent and in such amounts as may be provided in advance in appropriations Acts.

Section 501(d) of the Act provides that the Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the recipients that are pertinent to the grants received under the Act. The purpose of the amendment is to clarify EPA's authority to negotiate contracts with state audit organizations rather than seeking competitive bids.

Conference substitute

The conference substitute is substantially the same as the House amendment. It authorizes EPA to enter into contracts with independent State audit organizations consistent with the Single Audit Act.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Senate bill

No comparable provision.

House amendment

The House amendment amends the definition of "State" in section 502 and "United States" in section 311 to include the Commonwealth of the Northern Mariana Islands. Since the Act was last reauthorized in 1977, a portion of the Trust Territory of the Pacific Islands has been redesignated as the Commonwealth of the Northern Mariana Islands. Amending the definitions of the terms "State" and "United States" to include the Northern Marianas reflects the new status of the Commonwealth.

Conference substitute

The conference substitute adopts the House provision.

AGRICULTURAL STORMWATER DISCHARGES

Senate bill

No comparable provision.

House amendment

The House amendment amends setion 502(14) of the Federal Water Pollution Control Act to provide that the term "point source" of pollution does not include agricultural stormwater discharges.

Conference substitute

The conference substitute adopts the House amendment.

PROTECTION OF INTERESTS OF THE UNITED STATES IN CITIZEN SUIT

Senate bill

The Senate bill modifies the citizen suit provision of the Act to provide that the Attorney General and the Administrator of EPA must be notified when such a suit is commenced and to provide that no consent judgment shall be entered in an action brought under this section on which the United States is not a party prior to 45 days following the receipts of a copy of the proposed consent judgment by the Administrator and Attorney General.

House amendment

The House amendment is similar to the Senate bill, but also provides that no judgment in any action to which the United States is not a party may be binding on the United States

Conference substitute

The conference substitute adopts the Senate provision.

JUDICIAL REVIEW AND AWARD OF FEES

Senate bill

The Senate bill revises the provisions of section 509 of the Clean Water Act governing judicial review of certain actions of the Administrator of EPA and provides for the awarding of costs of litigation in actions brought pursuant to section 505 or 509 to prevailing or substantially prevailing parties.

The purpose of the changes in section 509(b)(1) is to clarify the proper venue for court of appeals review of certain actions of the Administrator under the Clean Water Act and to extend the period within which an application for review of such actions must be filed from ninety to one hundred and twenty days.

The Senate bill provides that proper venue for judicial review under section 509 of the Act shall be in the Circuit Court of Appeals of the United States for the Federal judicial district in which the applicant resides or transacts business which is directly affected by the action in question.

The Senate bill changes from ninety to one hundred and twenty days the period within which an application under section 509 of the Act for judicial review of an action must be made.

The Senate bill establishes a random selection procedure, to be administered by the Administrative Office of the United States Courts, to determine in an orderly fashion the court of appeals in which an agency action is to be reviewed when applications for review have been filed in two or more courts of appeals. Following the selection of a court of appeals, other courts in which applications have been filed are directed to promptly transfer such applications to the court in which the agency record has been filed. Notwithstanding the outcome of the random selection procedure, any court in which an application has been filed would retain the power to transfer the application to any other court of appeals for the convenience of the parties or otherwise in the interest of justice. The court of appeals would also be given the power to award costs of litigation to a prevailing or substantially prevailing party when such an award is appropriate.

The Senate bill limits the award of costs of litigation in citizen's suits under section 505(d) of the Act to prevailing or substantially prevailing parties.

Section 509(b)(3)(B), as amended, provides new authority for any court of appeals to grant a temporary stay of the effective date of a final agency action pending selection of the court of appeals in which the action will be reviewed.

House amendment

No comparable provision.

Conference substitute

The conference substitute adopts the Senate provisions.

INDIAN TRIBES

Senate bill

The bill amends title II of the Clean Water Act to accord Indian tribes assistance in the development and implementation of wastewater treatment facilities, including a one-year study of sewage treatment needs of Indian lands. Beginning in fiscal 1987, the section authorizes the use of up to one-half of one percent of the construction grants program for grants to Indian tribes to address unmet needs identified by the Administrator's report. This section also adds a definition of Indian tribes to the definitions contained in section 502 of the Act.

Title II of the Act is amended to direct the Administrator of the Environmental Protection Agency to conduct a study, in coordination with the Director of Indian Health Services, Department of Health and Human Services, to assess sewage treatment needs to serve Indian tribes. Additionally, this study will identify the degree to which such needs will be met through funds allotted to States under the construction grants program, and identify any obstacles which may prevent these needs from being met. Within one year of the date of enactment of the Clean Water Act amendments of 1985, the Administrator is directed to submit such report to Congress.

The Act is further amended to make tribes eligible, beginning in fiscal 1987, for direct EPA construction grants to address unmet needs identified in the Administrator's report to Congress. The Administrator is authorized to treat Indian tribes as States to the degree necessary to allot funds for sewage treatment needs, and is authorized to waive, where necessary, the non-Federal cost-sharing requirement, consistent with the trust responsibility and relationship which exists between tribal governments and Federal Government.

Finally, this provision adds to the Act a definition of Indian tribes specifying that, for the purposes of the Clean Water Act, the Indian tribes to be covered by the provisions of this section include any Indian tribe, band, nation, or other organized group or community, including an Alaska Native village, which is recognized as eligible for the special programs and services provided by the United States. The definition does not include Alaska Native regional or village corporations, which are organized for other purposes.

House amendment

The House amendment contains a simular provision, except the adminstrator is authorized to treat Indians as states under sections 104, 105, 303, 305, 308, 309, 314, 319, 402, and 404 of the act in addition to title II. The House amendment also contains a different definition of Indian tribes and establishes a setaside of ½ of 1% as a floor rather than a ceiling (as contained in the Senate bill).

Conference substitute

The conference substitute adopts the House amendment with modifications. Generally, the Conferees intend that to the extent to which the Administrator treats an Indian tribe as a State for purposes of this Act, such Indian tribe shall also be subject to the various provisions of the Act, such as section 101(g), which generically defines the regulatory reach of the Act. Further, with respect to section 101(g), the conference substitute adds explicit statutory recognition that the Indian tribes provisions do not in any way alter the requirements of section 101(g), and that Indian tribes are to be considered as States for the purposes of section 101(g).

The conference substitute also includes specific provisions related to the authority of Indian tribes to exercise authority under section 303.

The conference substitute directs EPA, in consultation with Indian tribes, to promulgate regulations which specify how Indian tribes shall be treated as States for the purpose of the Act. EPA is also directed in promulgating these regulations to consult affected States sharing common water bodies and provide a mechanism for the resolution of any unreasonable consequences that may arise as a result of differing water quality standards that may be set by States and Indian tribes located on common bodies of water. The conference substitute also provides for the explicit consideration of relevant factors in the dispute resolution mechanism, including but not limited to the effects of differing water quality permit requirements on upstream and downstream dischargers, economic impacts, and present and historical uses and quality of the waters subject to such standards.

The conferees also considered the question of the judicial review of water quality standards adopted by Indian tribes. The Conferees intend that the Agency's final action on a water quality standard adopted by an Indian tribe governing body pursuant to this section shall be subject to judicial review in the same manner and to the same extent as water quality standards adopted by States under this Act. However, the Congress does not intend to affect the outcome of pending litigation. Additionally, during the pendency of a judicial appeal, nothing in this provision shall be construed to enlarge, diminish or otherwise affect the authority of a tribal government which is a party to the appeal to set and enforce its own standards within and on land and water in its jurisdiction.

The conference substitute includes a section related to the application of the Indian tribes provision to Alaska Native organizations. It confirms that no provision of the Act shall be construed to have any effect on the scope of governmental authority, if any, of any Alaska Native organization (including any regional or village corporation) over lands or persons in Alaska. Additionally, the conference substitute provides that no provision of the Act shall be construed to create or validate any assertion by such organization or any form of governmental authority over lands or persons in Alaska. Finally, it provides that no provision of the Act shall affect any assertion that Indian country, as defined in section 1151 of Title 18, United States Code, exists or does not exist in Alaska.

The conferees intend that any Indian tribe be eligible for grant assistance under subsection (c) of this section, regardless of whether a tribe is treated as a State under subsection (d).

In allocation of funds under subsections (c) and (b), the Administrator shall consider the needs of tribes and the seriousness of the water quality problems to be addressed.

The Administrator, in cooperation with the Director of the Indian Health Service, may assist Indian tribes in development of waste treatment management plans and construction of treatment works.

This section does not override the provisions of the Maine Indian Claims Settlement Act (25 U.S.C. 1725). Consistent with subsection (h) of the Settlement Act, the tribes addressed by the Settlement Act are not eligible to be treated as States for regulatory purposes under subsection (d) of this provision. In addition, consistent with subsection (i) of the Settlement Act, such tribes are eligible for funds reserved under subsections (c) and (b) of this provision.

DEFINITION OF POINT SOURCE

Senate bill

No comparable provision.

House amendment

The House amendment, provides that "point source" includes a leachate collection system, other than a leachate collection system used for agricultural purposes.

Conference substitute

The conference substitute adopts the House amendment which is intended to clarify existing law.

SPECIAL PROVISIONS REGARDING CERTAIN DUMPING SITES

Senate bill

No comparable provision.

House amendment

No comparable provision.

Conference substitute

The conference agreement amends Title I of the Marine Protection Research and Sanctuaries Act of 1972 and prohibits issuance of any now permit to non-eligible authorities those not presently permitted to use the N.Y. Bight to dump or transport municipal sludge within the New York Bight Apex. In addition, as permit may be issued or renewed to anyone other than an eligible authority to dump or transport municipal sludge within the 106-mile Ocean Waste Dump Site designated by E.P.A.

OCEAN DISCHARGE RESEARCH PROJECT

Senate bill

No comparable provision.

House amendment

The House amendment authorizes EPA to issue a research permit to Orange County, CA, for the discharge of preconditioned sludge into the ocean for the purpose of enabling research to be conducted on the effects of disposing sewage sludge in ocean waters. The permit term is for a period of 5 years, and results of monitoring activities must be transmitted to Congress every 6 months. The permit is to be terminated at any time EPA determines than an unacceptable adverse impact on fish, shellfish and wildlife is occurring.

Conference substitute

The conference substitute is the House provision with the following changes. A requirement is added that, in order for the permit to be issued, the Administrator must determine that the permit would meet the requirements of section 301(h)(2) and the sentences after paragraph (9) of that subsection. These requirements include demonstrating that the permit will not interfere with the attainment or maintenance of water quality which assures protection of public water supplies, the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife and allows recreational activities in and on the water. In addition, the discharge must occur where there is strong tidal movement and other hydrological and geological characteristics which will allow compliance with the goals of this Act and section 301(h)(2).

The permit shall be for a period of five years commencing on the date of the discharge and cannot be extended or renewed.

Monitoring will include whole effluent monitoring—the monitoring of all of the constituents of the discharge—and bioassay methodology testing.

The facts and circumstances involved present a unique situation which is not to establish a precedent for the relaxation of the requirements of the Federal Water Pollution Control Act applicable to similarly situated discharges.

The provision on termination of the permit is modified to allow the Administrator to terminate the permit if there has been a decline in ambient water quality of the the receiving waters during the period of the permit even if a cause and effect relationship cannot be shown.

SAN DIEGO, CALIFORNIA

Senate bill

No comparable provision.

House amendment

The House amendment addresses the problems facing the economy, public health, environment, surface water, public beaches, and water quality of the city of San Diego, California, and surrounding areas, which are endangered and are being polluted by raw sewage emanating from the city of Tijuana, Mexico.

The House amendment provides that, upon approval of the necessary plans and specifications, the Administrator is authorized to make grants to the Secretary of the Army, acting through the Chief of Engineers or any other Federal agency or any other appropriate commission or entity designated by the President. Such grants shall be for construction of a project consisting of treatment works in the city of San Diego, California, to provide primary or more advanced treatment of municipal sewage and industrial waste from the city of Tijuana, Mexico, and a publicly owned treatment works in the city to provide primary or more advanced treatment of municipal sewage and industrial waste for the city of San Diego as may be necessary to meet the objectives of the Federal Water Pollution Control Act.

The House amendment provides that upon application of the City of San Diego, the Administrator may issue a permit under section 402 of the Federal Water Pollution Control Act which modifies the requirements of section 301(b)(1)(B) of such Act to permit the discharge of pollutants for any ocean outfall constructed with Federal assistance under this Act if such pollutants have received primary or more advanced treatment. Any permit issued pursuant to this subsection shall not be effective after December 31, 1993.

Conference substitute

The conference substitute modifies the House amendment. Construction grants are authorized for the construction of defensive waste treatment works to protect the residents of the city of San Diego, California, and surrounding areas from pollution resulting from any inadequacies or breakdowns in wastewater treatment works and systems in Mexico. Grants are also available to provide primary or more advanced treatment of municipal sewage and industrial waste from Mexico; however, such grants are available only if the Administrator determines that treatment works in Mexico, in conjunction with any defensive treatment works constructed under this or any other act, are not sufficient to protect the residents of the city of San Diego, California, and surrounding areas from water pollution originating in Mexico.

In addition, the conference agreement provides that the Commission or such other agency, commission, or entity as may be designated under subsection (b) is authorized to operate and maintain any treatment works constructed under the subsection.

If treatment works are constructed to protect San Diego and surrounding areas from pollution originating from Mexico, and those treatement works are no longer needed for that purpose, the city may use the treatment works to treat municipal and individual waste generated by San Diego and surrounding areas, provided the city agrees to pay the United States 45% of the treatment works construction costs.

LIMITATION ON DISCHARGE OF RAW SEWAGE BY NEW YORK CITY

Senate bill

The bill contain provisions which limit the volume of raw sewage discharged by the city of New York. The limitations apply to the drainage areas of two sewage treatment plants currently under construction, North River in Manhattan and Red Hook in Brooklyn.

Raw discharges from the North River drainage will be limited after August 1, 1986, if the North River plant has not achieved advanced preliminary treatment by the deadline, as required by a consent decree signed on December 29, 1982 by the United States, the State of New York, and the City of New York. The raw discharge in any 30 day period may not exceed 30 times the average daily raw discharge during a specific one year base period. The base period is the year ending on March, 15, 1986, or on the date the plant becomes operational, whichever is earlier.

Raw discharges from the Red Hook drainage area will be similarly limited, except that the deadline and the base period are one year later than for the North River drainage area.

The Administrator shall waive these limitations if an increased discharge constituting a violation is caused by certain events, but only to such extent and for such limited period of time as the Administrator determines to be necessary to take into account the event. These events include an interruption in plant operation due to circumstances beyond the control of New York City, and precipitation. In addition, a waiver shall be granted in the event that a violation is due to a random or seasonal variation in flow, and that any sewer hookup occurring or permit granted after July 31, 1986, for North River and July 31, 1987, for Red Hook is not responsible for such violation.

The Administrator is also required to extend either deadline if necessary to account for curcumstances beyond the control of New York City. A deadline may not be extended on the basis of a lack of Federal funding under section 201 of the Federal Water Pollution Control Act, a lack of New York State or New York City funding, or policy decision by New York State or New York City to delay the achievement of advanced preliminary treatment.

For enforcement purposes, violations of the discharge limitations are to be treated as violations of section 301 of the Federal Water Pollution Control Act. If the Administrator makes a determination that a violation has occurred and that there is no basis for a waiver or deadline extension, the Administrator must start an enforcement action under section 301 within another 30 days.

This section states that it is the sense of the Congress that the Administrator should not agree to any further modification of the consent decree with respect to the schedule for achieving advanced preliminary treatment.

Under a "sunset" provision, any limitations remain in effect in a drainage area until the treatment plant for that area has achieved advanced preliminary treatment for six consecutive months.

The Administrator is responsible for performing all flow monitoring needed to determine the discharge limitations. The Administrator must, by July 31, 1986, for North River and July 31, 1987, for Red Hook, establish the methodologies and collect any information necessary for making determinations whether a waiver or deadline extension will be required. If the Administrator detects a violation, the Administrator must determine within 30 days whether a waiver or deadline extension is required. New York City is responsible for providing any additional information requested by the Administrator in order to make this determination.

House amendment

Substantially the same as Senate bill.

Conference substitute

The conference substitute adopts the House amendment which is nearly identical to the Senate bill.

OAKWOOD BEACH AND RED HOOK PROJECTS, NEW YORK

Senate bill

No comparable provision.

House amendment

The House amendment provides that, notwithstanding any provision of the Federal Water Pollution Control Act, the Administrator of the Environmental Protection Agency shall pay, to the extent provided in appropriation Acts, in the same proportion as the Federal share of other project costs, all expenses for the relocation of facilities for the distribution of natural gas with respect to the entire wastewater treatment works known as the Oakwood Beach (EPA Grant Number 360932) and Red Hook (EPA Grant Number 360394) projects, New York.

Conference substitute

The conference substitute agreement adopts the House amendment and changes the fiscal year to 1986, while authorizing $7,000,000.

BOSTON HARBOR AND ADJACENT WATERS

Senate bill

No comparable provision.

House amendment

The House amendment directs the Administrator to make grants to the Massachusetts Water Resource Authority for purposes of assessing the principal factors having an adverse effect on the environmental quality of Boston Harbor and its adjacent waters, developing and implementing a management program to improve the water quality of such Harbor and waters, and constructing necessary wastewater treatment works for providing secondary treatment for the areas served by such authority.

Conference substitute

The conference substitute adopts the House amendment and adds authority for the Administrator to make grants for emergency improvements to the Deer Island Waste Treatment Plant in Boston, Massachusetts. A total of one hundred million dollars is authorized for fiscal years beginning after 1986, to remain available until expended.

DEER ISLAND TREATMENT PLANT, MASSACHUSETTS

Senate bill

No comparable provision.

House amendment

The House amendment authorizes and directs the Administrator of the Environmental Protection Agency to make grants to the Metropolitan District Commission, Massachusetts, for a project to undertake emergency improvements at the Deer Island Waste Water Treatment Plant in Boston, Massachusetts.

Conference substitute

The conference substitute incorporates the House amendment in the provision on Boston Harbor, at a total authorization of $100 million.

WASTEWATER RECLAMATION DEMONSTRATION

Senate bill

No comparable provision.

House amendment

The House amendment authorizes the Administrator of the Environmental Protection Agency to make a grant to the San Diego Water Reclamation Agency, California, to demonstrate and field test for public use innovative processes which advance the technology of wastewater reclamation and which promote the use of reclaimed wastewater.

Conference substitute

The conference substitute adopts the House amendment and authorizes $2,000,000 for the San Diego, California, Water Reclamation Agency. The Federal share of grants made to the agency shall be 85% of the costs of conducting demonstration and field testing.

DES MOINES, IOWA

Senate bill

No comparable provision.

House amendment

The House amendment authorizes the Administrator of the Environmental Protection Agency to make a grant to the City of Des Moines, Iowa, for construction of the Central Sewage Treatment Plant component of the Des Moines, Iowa, metropolitan area project.

Conference substitute

The conference substitute adopts the House amendment and authorizes $50,000,000 to provide a 75% grant for the construction of the treatment plant.

STUDY OF REGULATION OF DE MINIMIS DISCHARGES

Senate bill

No comparable provision.

House amendment

The House amendment directs the Administrator to study the feasibility and desirability of eliminating the regulation of discharges of pollutants into the navigable waters in amounts which, in terms of volume, concentration, and type of pollutant, are not significant.

Conference substitute

The conference substitute adopts the House amendment with modifications to direct a study of discharges of pollutants to determine whether or not there are discharges in amounts which, in terms of volume, concentration, and type of pollutant, are not significant, and to determine the most effective and appropriate methods of regulating such discharges.

STUDY OF EFFECTIVENESS OF INNOVATIVE AND ALTERNATIVE PROCESSES AND TECHNIQUES

Senate bill

No comparable provision.

House amendment

The House amendment directs the Administrator of the Environmental Protection Agency to study the effectiveness on waste treatment of innovative and alternative wastewater treatment processes and techniques which have been utilized in treatment works constructed under the Act.

Conference substitute

The conference substitute adopts the House amendment, modifying the deadline for submission of the Administrator's report from two years to one year after date of enactment of this Act.

STUDY OF TESTING PROCEDURES

Senate bill

No comparable provision.

House amendment

The House amendment directs the Administrator to study the testing procedures for analysis of pollutants. The study shall include but is not limited to, an analysis of the adequacy and standardization of testing procedures. The Administrator is also directed, biennially after the date of submission of the report on tesing procedures for the analysis of pollutants for the purposes of determining the adequacy and effectiveness of such procedures and, based on the results of such review, to submit to the Committees recommendations for modifying testing procedures to imporve their effectiveness.

Conference substitute

The conference substitute adopts the House provision. The study and biennial review of test procedures established under section 304(h) should include test procedures for pollutants in sewage sludge.

STUDY OF PRETREATMENT OF TOXIC POLLUTANTS

Senate bill

No comparable provision.

House amendment

The House amendment directs the Administrator of the Environmental Protection Agency to conduct a study and make a report with recommendations concerning a number of pretreatment-related issues.

The Administrator is directed to study the adequacy of data on environmental impacts of toxic industrial pollutants discharged through publicly owned treatment works; the extent that secondary treatment by these treatment works removes toxic pollutants; the capability of publicly owned treatment works to grant pretreatment removal credits authorized under section 307(b)(1) of the Federal Water Pollution Control Act; possible alternative regulatory strategies for protecting the operations of publicly owned treatment works from industrial discharges, including an evaluation of how effective each strategy might be in achieving the goals of the Water Pollution Control Act and the Federal Water Pollution Control Act, and the adequacy under each of the strategies studied of Federal, state, and local resources to establish, implement, and enforce mutiple pretreatment limits for toxic pollutants.

Conference substitute

The conference substitute adopts the House provision, modified to assure that issues related to contamination of sewage sludge are included in the study for each identified alternative regulatory strategy. The study shall be completed within four years.

STUDIES OF WATER POLLUTION PROBLEMS FOR AQUIFERS

Senate bill

No comparable provision.

House amendment

The House amendment authorizes the Administrator in conjunction with State and local agencies to conduct studies of a number of aquifers for the purpose of identifying point and non-point sources of pollution and identifying measures necessary to control such pollution.

Conference substitute

The conference substitute includes a provision authorizing the Administrator of the Environmental Protection Agency to conduct studies of ground water quality problems for seven aquifers or areas of undeground water supply. In addition to those aquifiers originally identified in the House amendment, the areas include the northwestern portion of Connecticut including all or portions of Litchenfiled, Hartford, Fairfield, Tolland and New Haven counties. The conference substitute includes a one-tie authorization of $7,000,000 to conduct such studies.

GREAT LAKES CONSUMPTIVE USE STUDY

Senate bill

No comparable provision.

House amendment

The House amendment authorizes EPA to conduct a study of control measures which can be implemented to reduce the quantity of Great Lakes water consumption.

Conference substitute

The conference substitue modifies the House amendment to provide the Corps of Engineers and EPA must conduct a study of the effects of Great Lakes water consumption on economic growth or environmental quality in the Great Lakes region. The section authorizes $750,000.

The consumptive use study is to be responsive to the findings in the 1985 report of the International Joint Commission and is not to imply an immediate need for far reaching water conservation requirements. The 1985 report of the IJC indicated, among other things, the uncertainty of comsumptive use estimates. Thus, the conferees recognize the need for improving data on water use trends.

SULFIDE CORROSION STUDY

Senate bill

No comparable provision.

House amendment

The House amendment provides that, in order to protect the Federal and other investment in treatment works, the Administrator shall conduct a study of the problem of the corrosive effects of sulfides in collection and treatment systems, the extent to which the uniform imposition of categorical pretreatment standards will exacerbate this problem, and the range of available options to deal with the effects. The required study is to be conducted in consultation with the Los Angeles City and County sanitation agencies which have observed examples of corrosion, probably caused by sulfides.

Conference substitute

The conference agreement adopts the House amendment with the authorization reduced from $2 million to $1 million.

STUDY OF RAINFALL INDUCED INFILTRATION INTO SEWER SYSTEMS

Senate bill

No comparable provision.

House amendment

The House amendment directs the Administrator to study problems associated with rainfall induced infiltration into wastewater treatment sewer systems. The study shall include an examination of methods to regulate such infiltration into the sewage system of the East Bay Municipal Utility District, California.

Conference substitute

The conference substitute adopts the House amendment as modified.

DAM WATER QUALITY STUDY

Senate bill

No comparable provision.

House amendment

The House amendment directs the Administrator, in cooperation with State and Federal agencies, to study and monitor the effects impoundment and discharge of water by dams have on water quality.

Conference substitute

The conference substitute is the House provision as modified.

LAKE PEND OREILLE STUDY

Senate bill

A comprehensive water quality investigation of the Clarks Fork/Lake Pend Oreille system in Idaho and Montana is authorized to identify sources of pollution and the remedial measures necessary to protect and enhance the water quality of this important resource. The Clarks Fork/Pend Oreille system is a primary feature of the environment of northern Idaho, western Montana and eastern Washington.

House amendment

Contains a similar provision.

Conference substitute

The conference substitute adopts the Senate language but broadens the area of the study to incude the Clark Fork River and its tributaries in the States of Idaho, Montana, and Washington.

RESERVATION OF FUNDS FOR INTERSTATE SANITARY COMMISSION

Senate bill

No comparable provision.

House amendment

The House amendment amends section 205(g)(1) by adding a provision that the Administrator shall reserve each fiscal year beginning after September 30, 1985, $900,000 from the sums available to the State of New York under the subsection for such fiscal year, $900,000 from the sums available to the State of New Jersey under the subsection for such fiscal year, and $200,000 from the sums available to the State of Connecticut under the subsection for such fiscal year. These sums shall be used by the Administrator to make a grant for each such fiscal year to the Interstate Sanitation Commission established by these States by interstate compact to carry out the functions of such Commission under the Federal Water Pollution Control Act.

Conference substitute

The conference substitute drops the House amendment.

GRANTS FOR PROTECTING GROUNDWATER QUALITY

Senate bill

No comparable provision.

House amendment

The House amendment authorized a new grant program to assist States in carrying out groundwater protection activities which the Administrator determines will advance the State toward implementation of an approved comprehensive nonpoint source pollution control program not more than $7.5 million is authorized to be appropriated for each of fiscal years 1985 through 1990 to assist States with research, planning, groundwater assessments, demonstration programs, enforcement, technical assistance, education and training to protect groundwater quality and prevent contamination. Not more than $150,000 may be appropriated to any one State in any one fiscal year. The Federal share of activities eligible for grants would be 50 percent.

Conference substitute

The House provision was included in slightly modified form in the conference substitute as part of the new program for management of nonpoint source pollution in section 319 of the Act.

RESERVATION FOR INVESTIGATIONS AND AUDITS

Senate bill

The Senate bill contains no provision.

House amendment

The House amendment contains a provision reserving one-quarter of one percent of any amount appropriated pursuant to section 207 of the Act for carrying out audits and investigations.

Conference substitute

The conference substitute deletes the House provision.

INTERSTATE DISPUTE RESOLUTION

Senate bill

The bill amends section 402 of the Clean Water Act to require the Administrator to finally decide disputes between States as to whether a discharge for which one State proposes to issue a permit will cause or contribute to a substantial violation of water quality requirements or adversely affect public health in another State. Under current law, a State whose waters may be affected by the issuance of a permit in another State may submit recommendations to the permitting State. If those recommendations are not accepted by the permitting State, the Administrator may object to the issuance of the permit.

The Senate bill requires the Administrator to decide the merits of such a dispute. Where the permitting State fails to accept the recommendations of the downstream State, the Administrator shall determine whether any substantial violation of a water quality requirement (including any standard) or adverse effect on public health of the downstream State would result from the issuance of the permit. If so, the Administrator must object to the issuance of the permit or provide specific modifications to the permit. Any determination by the Administrator under this provision would constitute the issuance or denial of a permit and would be subject to judicial review under section 509(b).

In addition to the procedure established for resolving disputes over proposed permits, the bill requires that a permit which is in effect shall be reconsidered for termination or modification when a downstream State provides notice that the permitted discharge is causing a substantial violation of a water quality requirement (including any standard) or adversely affecting the public health of such State and seeks a modification of the permit. Then, in the permit proceeding to terminate, or modify, or reissue the permit, the affected State may make recommendations which, if not accepted, would be subject to the new dispute resolution provision proposed in the Senate bill.

A new section 511(e) is added by the bill, providing a new method of resolving disputes between States over the effects of activities in one State on the water quality of another State. The provision is intended to address sources of pollutants not covered by permits, and therefore not subject to the interstate dispute resolution mechanism proposed for inclusion in section 402. Under section 511(e) a State or municipality which alleges that its water quality is being adversely affected by pollutants from another State may petition the Administrator. The Administrator must then determine on the record, after a hearing under the Administrative Procedures Act, whether such pollution is causing a substantial violation of a water quality requirement (including any standard) of the downstream State or adversely affecting the public health of such State.

If the Administrator so determines, the Administrator must issue an order within 90 days restraining any permit causing or contributing to such pollution or providing such other relief as is appropriate, taking into account the goals and requirements of the Clean Water Act and other equitable considerations. Such an order is judicially reviewable.

In no case shall orders or other relief based solely on amendments proposed to Section 511 supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws. This new subsection does not apply in any case in which the new disputes resolution provisions in the Senate amendments to section 402 are available, nor to any pollution which is subject to the Colorado River Salinity Control Act of 1974, nor to any water pollution which results from emissions from mobile or stationary sources which are regulated under the Clean Air Act.

House amendment

No comparable provision.

Conference substitute

The conference substitute deletes the provisions in the Senate bill.

PRESERVATION OF OTHER RIGHTS

Senate bill

The bill amends section 505 of the Clean Water Act, the citizen suit provisions, to clarify that nothing in the Act displaces, preempts, or limits the ability of any person injured by noncompliance with any Clean Water Act requirement or permit to seek damages under other Federal statutes. In addition, new subsection (e)(3) provides that State or municipalities may bring actions involving State law, in cases involving water pollution arising in another State, in Federal district court, in either the State bringing the action or the State in which the cause of action arose.

House amendment

The amendment contains a provision substantially the same as the Senate bill with respect to suits for damages under other Federal statutes but does not have a provision comparable to the treatment at States and municipalities as citizens.

Conference substitute

The conference substitute contains no comparable provision.

RELATIONSHIP TO OTHER LAWS

Senate bill

No comparable provision.

House amendment

The amendment provides that discharges from a deepwater port or a vessel within a deepwater port safety zone which are subject to the Deepwater Port Act are not also subject to the liability and penalty provisions of the Water Pollution Control Act.

Conference substitute

The conference substitute deletes Section 31 of the House bill solely in order to address the matter on the more approximate context of comprehensive oil spill legislation. This section's purpose is to remove the current confusion over what liability and penalty provisions apply to deepwater port licensees and owners or operators of vessels within deepwater port safety zones. Presently, there is the potential for dual liability under Section 311 of the FWPCA and Section 18 of the Deepwater Port Act of 1974. Although not including Section 31 in the Conference Report, the conferees continue to believe that reform is needed in this area, so that such licensees and vessel owners or operators are not exposed to overlapping or conflicting liability and penalty provisions.

TEST PROCEDURES

Senate bill

No comparable provision.

House amendment

The House amendment changes the date by which the Administrator must promulgate guidelines establishing test procedures for the analysis of pollutants to ninety days after the date of enactment.

Conference substitute

The conference substitute deletes the House provision because the guidelines for analysis of pollutants already have been issued. However, the Administrator also should publish guidelines for testing for pollutants in sewage sludge. All guidelines should be renewed every two years to insure their continued adequacy.

WATER QUALITY CRITERIA

Senate bill

No comparable provision.

House amendment

Section 304(a)(1) of the Act directs the Administrator to develop and publish criteria for water quality accurately reflecting the latest scientific knowledge on the kind and extent of all identifiable effects on health and welfare. The House amendment amends this provision by adding the requirement that, in developing, publishing and revising criteria, the Administrator shall consider, among other things, the effects on the ecosystem of water hardness ph, chemical and physical interactions, persistence of pollutants and the long-term effects of pollutants; sedimentation from chemical reaction of pollutants, the absorptive properties of sediments, resuspension, and bio-uptake.

The House amendment states that EPA, in issuing new or revised water quality criteria, should set criteria which will provide an ample margin of safety to protect human health and fish and wildlife resources.

The House amendment also adds the requirement that in the development of new or revised criteria with respect to a pollutant, whenever the Administrator determines that a well-founded and significant difference of opinion exists as to the latest scientific and research knowledge on the matters referred to in the section, the Administrator shall publish a description of this difference of opinion along with the publication of the criteria.

The House amentment also states that it is the sense of the Congress that the Administrator and the States in developing, publishing, and revising water quality criteria under section 304(a)(1) of the Federal Water Pollution Control Act, should consider the economic impact of their decisions on the impacted States.

Conference substitute

The conference substitute contains no comparable provision.

STUDY OF PH IN DISCHARGES FROM MINING OPERATIONS

Senate bill

No comparable provision.

House amendment

The House amendment directs the Administrator to study effluent limitations as they relate to pH in discharges from mining operations. Not later than one year after the date of enactments the Administrator is to submit to Congress a report on the results of the study along with recommendations as to the feasibility of permitting modifications of such effluent limitations to permit lower pH in such discharges than is otherwise required.

Conference substitute

The conference substitute deletes the House amendment.

PULP MILL STUDY

Senate bill

No comparable provision.

House amendment

The House amendment directs the Administrator of the Environmental Protection Agency, in consultation with the State of Alaska, to conduct and prepare a study-report which shall determine the feasibility of resolving the air pollution control, solid waste disposal, water quality standards compliance, and energy impacts associated with the achievement of best practical technology under section 301 of the Federal Water Pollution Control Act with respect to the Alaska Lumber and Pulp Company, located at Sitka, Alaska (NPDES permit numbered AK000053-1).

Conference substitute

The conference substitute deletes the House amendment.

TREATMENT WORKS IN WASHINGTON STATE

Senate bill

No comparable provision.

House amendment

The House amendment authorizes the Administrator to make grants to the sewage treatment authorities discharging into Puget Sound and adjacent marine waters, including the Strait of Juan de Fuca and Bellingham Bay, to construct necessary treatment works for providing secondary treatment for the areas served by such authorities.

Conference substitute

The conference substitute deletes the House amendment.

CHIPPEWA TOWNSHIP, PENNSYLVANIA

Senate bill

No comparable provision.

House amendment

The House amendment provides that, in order to protect the public health, environment, and water quality endangered by the destruction of the Chippewa Township, Pennsylvania, sewage treatment facility and the resultant raw sewage discharge into Brady's Run, Pennsylvania, the Administrator of the Environmental Protection Agency is directed to remove the raw sewage.

Conference substitute

The conference substitute deletes the House amendment.

NACO, ARIZONA

Senate bill

No comparable provision.

House amendment

The House amendment provides that, for purposes of protecting the economy, public health, environment, and surface and ground water of the community of Naco, Arizona, which are in danger and are being polluted by raw sewage emanating from the community of Naco, Sonora, Mexico, upon application of the County of Cochise, Arizona, the Administrator of the Environmental Protection Agency shall make grants to such County for construction of a project consisting of a publicly owned treatment works to provide primary or more advanced treatment of not less than 150,000 gallons of untreated sewage emanating from the City of Naco, Sonora, Mexico, and treatment of waste from Naco, Arizona.

Conference substitute

The conference substitute deletes the House amendment.

NEWTOWN CREEK, NEW YORK

Senate bill

No comparable provision.

House amendment

The House amendment authorizes the Administrator to make a grant to the City of New York to install such additional facilities in, and make such modifications to, the Newton Creek sewage treatment plant as are necessary for the plant to provide secondary treatment. The Federal share of the project is 75 percent of the cost of installing such facilities and making such modifications.

Conference substitute

The conference substitute deletes the House amendment.

GRANTS FOR REPLACEMENT OF CONTAMINATED GROUNDWATER

Senate bill

No comparable provision.

House amendment

The House amendment authorizes EPA to make 50 percent grants to any public water supply system or local government for the provision of alternative water supplies where the water supply system is unable to supply water which is fit for human consumption because of ground water contamination. The Administrator is directed to make a grant to Jacksonville, Arkansas, for the purpose of providing a temporary alternative water supply.

Conference substitute

The conference substitute contains no comparable provision.

NPDES PERMIT AREA

Senate bill

No comparable provision.

House amendment

Section 402(b)(1)(B) of the Federal Water Pollution Control Act currently provides that permits for the discharge of pollutants are to be for fixed terms not exceeding five years.

The House amendment authorizes the issuance of certain permits for terms of up to ten years.

For a permit to be granted for a term not to exceed ten years, the State must determine, in accordance with regulations established by the Administrator, or the Administrator must determine (depending on whether the permit program is administered by the State or EPA) that the applicant has consistently complied with any permit issued under section 402 of the Act, and that toxic and nonconventional pollutants (other than the five nonconventional pollutants for which effluent limitation variances may be granted under section 301(g)) are not detectable in the effluent or that these pollutants are present only in trace amounts and are neither causing nor are likely to cause toxic effects, alone or in combination with pollutants from other sources.

For a permit issued for a term in excess of five years, the permit must be modified promptly to ensure compliance with any new or revised effluent limitation under section 307(a) of the Act (toxics) or any new or revised requirement pursuant to a standard under section 303 of the Act (water quality standards) when the effluent limitation is more stringent than the existing limitation or controls a pollutant not controlled in the permit and must ensure compliance with other revised effluent limitations, pretreatment standards, or sewage sludge regulations.

Conference substitute

The conference substitute has no comparable provision.

IN MEMORIAM

The managers on the part of the House and the Senate wish to acknowledge the contribution of the late Peter Perez of the Environmental Protection Agency to this reauthorization of the Clean Water Act. Mr. Perez' detailed knowledge of the clean water program and his tireless commitment to improve the quality of the Nation's environment have left an indelible mark on this legislation and those who benefit from it.

Robert A. Roe,
Glenn M. Anderson,
Norman Y. Mineta,
James L. Oberstar,
Bob Edgar,
Edolphus Towns,
James J. Howard,
Gene Snyder,
John Paul Hammerschmidt,
Arlan Stangeland,
Bill Clinger,
Bud Shuster,

As additional conferees, solely for section 59 and 73 of the House amendment and modifications committed to conference:

HENRY J. NOWAK,

Solely for sections 5, 16, 30(a), 34(b), and 45 of the House amendment and modifications committed to conference:

J. ROY ROWLAND,
Managers on the Part of the House.

ROBERT T. STAFFORD,
JOHN CHAFEE,
AL SIMPSON,
DAVID DURENBERGER,
LLOYD BENTSEN,
GEORGE MITCHELL,
DANIEL MOYNIHAN,
Managers on the Part of the Senate.

○

HOUSE DEBATE ON H.R. 8
(DEBATE ON THE RULE)

July 18, 1985

(Congressional Record, vol. 131, part 14, 19634-19635)

PROVIDING FOR CONSIDERATION OF H.R. 8, WATER QUALITY RENEWAL ACT OF 1985

Mr. MOAKLEY. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 222 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. Res. 222

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 8) to amend the Federal Water Pollution Control Act to provide for the renewal of the quality of the Nation's waters, and for other purposes, and the first reading of the bill shall be dispensed with. All points of order against the consideration of the bill for failure to comply with the provisions of section 402(a) of the Congressional Budget Act of 1974 (Public Law 93-344) are hereby waived. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Public Works and Transportation, the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Public Works and Transportation now printed in the bill as an original bill for the purpose of amendment under the five-minute rule, and each section of said substitute shall be considered as having been read. Immediately after the enacting clause of the bill is read, it shall be in order to consider, before any other amendments, the amendments to the committee substitute printed in the Congressional Record of July 16, 1985, by, and if offered by, Representative Howard of New Jersey, said amendments shall be considered en bloc and shall be in order although amending portions of the substitute not yet read for amendment, and said amendments shall not be subject to a demand for a division of the question in the House or in Committee of the Whole. If said amendments are adopted, they shall be considered, as finally adopted, to have been adopted in the House and in Committee of the Whole, and it shall be in order to consider the committee amendment in the nature of a substitute, as so modified, as an original bill for the purpose of amendment under the five-minute rule, and each section shall be considered as having been read. It shall also be in order to consider an amendment to said substitute printed in the Congressional Record of July 16, 1985, by, and if offered by, Representative Jones of North Carolina, said amendment shall be considered as having been read, and all points of order against said amendment for failure to comply with the provisions of clause 7 of rule XVI are hereby waived. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute, except as otherwise provided by this resolution. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from Massachusetts [Mr. MOAKLEY] is recognized for 1 hour.

Mr. MOAKLEY. Mr. Speaker, I yield the customary 30 minutes to the gentleman from Tennessee [Mr. QUILLEN], for purposes of debate only, pending which I yield myself such time as I may consume.

(Mr. MOAKLEY asked and was given permission to revise and extend his remarks.)

Mr. MOAKLEY. Mr. Speaker, House Resolution 222 is an open rule that provides for the consideration of H.R. 8, the Water Quality Renewal Act of 1985. The resolution provides for 1 hour of general debate to be equally divided and controlled by the chairman and ranking minority member of the Committee on Public Works and Transportation. The rule waives points of order under section 402(a) of the Congressional Budget Act against consideration of the bill. Section 402(a) provides that it shall not be in order to consider any bill which authorizes the enactment of new budget authority for a fiscal year unless that bill has been reported on or before May 15 preceding the beginning of such fiscal year.

H.R. 8 would reauthorize water quality programs administered by the Environmental Protection Agency for fiscal years 1985 through 1990. Since the bill authorizes the enactment of new budget authority for fiscal years 1985 and 1986, and since it was not reported by the May 15 deadline for either fiscal year, it violates section 402(a) of the Budget Act.

In addition, Mr. Speaker, House Resolution 222 makes in order the Public Works and Transportation Committee amendment in the nature of a substitute now printed in the bill as original text for the purpose of amendment to be considered by sections, with each section to be considered as read. The rule also provides that immediately after the enacting clause is read and prior to the consideration of any other amendments, it shall be in order to consider the amendments to the committee substitute by Representative HOWARD, printed in the CONGRESSIONAL RECORD of July 16, 1985. These amendments shall be considered en bloc, and the amendments shall not be subject to division of the question and shall be in order although amending portions of the substitute not yet read for amendment either in the House or the Committee of the Whole.

Mr. Speaker, if the Howard amendments are adopted, the committee substitute as amended shall be considered as original text for amendment, with each section to be considered as read. Mr. Speaker, House Resolution 222 also makes in order an amendment printed in the CONGRESSIONAL RECORD of July 16, 1985, to be offered by Representative JONES of North Carolina. The rule provides that the amendment shall be considered as read, and waives all points of order against the amendment for failure to comply with the provisions of clause 7, rule XVI, the germaneness rule. Finally, Mr. Speaker, House Resolution 222 provides for one motion to recommit with or without instructions.

Mr. Speaker, H.R. 8 the Water Quality Renewal Act of 1985 would provide for a 5-year extension of the authorization for various water quality programs to be administered by the Environmental Protection Agency. The bill would provide a balanced and comprehensive reauthorizaton of one of the Nation's most important environmental laws, the Federal Water Pollution Control Act, also referred to as the Clean Water Act. This act was first implemented in 1972 to control the discharges of pollutants into the Nations water. Mr. Speaker, H.R. 8 contains a number of provisions designed to improve the Nation's water pollution control programs. The bill for construction grants program authorizes $12 billion through fiscal year 1990.

Mr. Speaker, under current law the Federal share of any construction project will not exceed 55 percent of the project's total cost; provisions in H.R. 8 would retain that figure. In addition, H.R. 8 authorizes a new revolving fund program to assist communities within each State for the construction of needed wastewater treatment facilities. Each State would contribute at least 20 percent of the amount of its grant into the fund. The purpose of this revolving fund process is to eventually transfer all responsibility of treatment facilities construction from the Federal Government to the States and local communities.

Mr. Speaker, H.R. 8 would also authorize funds for a nonpoint source pollution control program. These types of nonpoint source pollution are a result of farm and forest land storm runoff. Nonpoint sources are estimated to account for 50 percent or more of the pollutant loads in the U.S. lakes and streams.

Mr. Speaker, H.R. 8 is similar to H.R. 3282 which passed the House by a vote of 405 to 11 during the 98th Congress. However, this measure failed to become law because the other body failed to take their bill to the floor. This year, however, the Senate has passed legislation dealing with pollution control. Mr. Speaker, the passage of this bill would allow the Federal Government to begin the programs that would improve the quality of our Nation's waterways. Mr. Speaker, I strongly urge the adoption of the resolution.

Mr. Speaker, I yield to the gentleman from Tennessee, for the purpose of debate only.

Mr. Speaker, I move the previous question on the resolution.

☐ 1200

Mr. QUILLEN. Mr. Speaker, I yield myself as much time as I may use.

(Mr. QUILLEN asked and was given permission to revise and extend his remarks.)

Mr. QUILLEN. Mr. Speaker, this is a somewhat complex rule as has been ably explained by my friend, the gentleman from Massachusetts [Mr. MOAKLEY]. I am not aware of any objection to the rule, however, and I urge its adoption.

H.R. 8 is a major bill setting the pace for our national water pollution control effort. The bill is similar to last year's water quality renewal bill which passed the House by a vote of 405 to 11. The other body failed to act on its version prior to adjournment.

The changes in the Federal Water Pollution Control Act of 1972 embodied in H.R. 8 are the result of a great deal of work undertaken over the past 3 years by the members of the Public Works and Transportation Committee. Although there is controversy regarding this bill, I think the leadership and members of the committee, on a completely bipartisan basis, are to be commended for writing a strong environmental bill that is realistic and also responsive to the needs of economic development.

H.R. 8 renews a great number of existing programs and creates several new programs to help in the Federal effort to reduce pollution in our Nation's waters. One new initiative, in particular, deserves our support.

The bill creates a new revolving fund

program through which States will be able to provide loans, guarantees, and interest subsidies to its communities. After repayment, the States will be able to use the money again to help other communities construct additional pollution control facilities. It is expected that this new program will allow many more communities to receive funding for needed construction projects than is now possible. This is an innovative approach to stretch our scarce dollars as far as possible to meet serious pollution problems throughout the country.

Mr. Speaker, I urge adoption of the rule so that we can begin work on this important bill.

Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

Mr. **MOAKLEY**. Mr. Speaker, I have no further requests for time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The motion was agreed to.

HOUSE DEBATE ON H.R. 8
(GENERAL DEBATE AND DEBATE ON AMENDMENTS)

July 22 and 23, 1985

(Congressional Record, vol. 131, part 14, 19846-19855,
and vol. 131, part 15, 19993-20112)

WATER QUALITY RENEWAL ACT OF 1985

The SPEAKER pro tempore (Mr. MONTGOMERY). Pursuant to House Resolution 222, and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 8.

The Chair designates the gentleman from Nevada [Mr. REID] as Chairman of the Committee of the Whole, and requests the gentleman from Texas [Mr. GONZALEZ] to assume the chair temporarily.

□ 1350

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 8) to amend the Federal Water Pollution Control Act to provide for the renewal of the quality of the Nation's waters, and for other purposes, with Mr. GONZALEZ, Chairman pro tempore, in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from New Jersey [Mr. ROE] will be recognized for 30 minutes and the gentleman from Minnesota [Mr. STANGELAND] will be recognized for 30 minutes.

The Chair recognizes the gentleman from New Jersey [Mr. ROE].

● Mr. HOWARD. Mr. Chairman, I take great pleasure in bringing to the floor today H.R. 8, the Water Quality Renewal Act of 1985. This bill makes a number of changes to the Federal Water Pollution Control Program to make it more responsive to the needs for water pollution control and to ensure that our efforts to improve and maintain the quality of our waters will continue in an effective and environmentally sound manner.

I wish to commend Representative ROBERT A. ROE, the chairman of the Subcommittee on Water Resources, the ranking member, Representative ARLAN STANGELAND, and the other members of the subcommittee as well as the members of the full committee for their outstanding work on this bill.

Protection of our waters is among the most important responsibilities we have in the Congress. Water is at the same time the cheapest but most expensive commodity we have. Over the years, we have learned that we can pollute the waters quickly but it takes years to clean them up. Coming from a shore district that is strongly dependent on clean water, I am especially aware of the need to prevent any degradation.

We must continue the efforts that have been made in the last decade to clean up the waters. We have heard many reports of improved water quality, of the return of fish to areas where they had not been for years. H.R. 8 will allow us to continue in that direction.

The 1972 amendments to the Federal Water Pollution Control Act have resulted in significant improvement in the control of discharges of pollutants into the Nation's waters. Studies indicate that at the very least, pollution loads have not increased even though substantial increases in population and industrial discharges have occurred. However, the program has not performed as well as expected due primarily to uncertainties in funding, insufficient levels of funding, and delays in promulgation of effluent standards of industrial dischargers.

H.R. 8 is designed to correct difficulties exising with regard to the program and to significantly improve the effectiveness of the Water Pollution Control Program. Among the major features of this bill are:

A $21 billion, 9-year combination grant and loan program for construction of sewage treatment plants;

A program to clean up toxic hot spots that cannot be removed through normal procedures;

A program to set up interstate management conferences to protect and clean up our bays and estuaries;

The cleanup of some of the Nation's major waterways, such as the Chesapeake Bay, the Narragansett Bay and the New York-New Jersey Harbor area;

A ban on the discharge into estuaries of sewage that has not received secondary treatment;

Requirements that industry comply with best available technology requirements within 3 years and 6 months of the promulgation of regulations by E.P.A.;

Provision for interim measures to address stormwater runoff problems until E.P.A. completes a study of the problem; and

Limitations on allowing less stringent effluent requirements in a new or modified permit where the original permit was based on best professional judgement or on water quality standards.

Mr. Chairman, I urge passage of H.R. 8, the Water Quality Renewal Act of 1985, so that we can continue the efforts to preserve the quality of our environment that were begun with the 1972 act.●

Mr. ROE. Mr. Chairman, I yield myself such time as I may consume.

(Mr. ROE asked and was given permission to revise and extend his remarks.)

Mr. ROE. Mr. Chairman, it is a pleasure for me to bring to the floor the bill H.R. 8, the Water Quality Renewal Act of 1985. This bill is the result of an enormous amount of effort on the part of the Subcommittee on Water Resources and the full committee, as well as by Chairman Howard who has been and is working diligently to develop legislation which is environmentally sound and can be enacted into law. I would like to take this opportunity to thank him for his leadership and dedication, and to acknowledge the most helpful cooperation of the ranking minority member of the subcommittee, Congressman Arlan Stangeland, and of course, the ranking minority member of the full committee, Congressman Gene Snyder.

This bill contains a number of provisions designed to improve the Federal water pollution control program. The bill continues through fiscal year 1990 authorizations at existing levels for a number of programs in the Water Pollution Control Act, including research activities, training of personnel, forecasting the supply of and demand for occupational categories needed in the water pollution control field, grants to State and interstate agencies to assist in administering programs for water pollution control, grants to educational institutions for programs to train personnel in the operation of water pollution control facilities, grants under section 208 for developing and operating areawide waste treatment management planning processes, grants for the Rural Clean Water Program, the Clean Lakes Program, and the general administration of the Federal Water Pollution Control Act by the Environmental Protection Agency.

The Construction Grants Program, which provides a 55-percent Federal grant for the construction of sewage treatment facilities, is continued at its present level of $2.4 billion per year through fiscal year 1990. In addition, a new grant program is authorized which provides funds to the States to establish water pollution control revolving funds. These revolving funds are to be used by the States to make low interest loans, subsidize bonds, and take other similar measures in order to assist communities in the construction of sewage treatment works. The States must contribute 20 percent of their own money to these revolving funds.

The authorized amounts for grants for these revolving funds are $600 million per year for fiscal years 1986 through 1990, $2.4 billion for fiscal year 1991, $1.8 billion for fiscal year 1992, $1.2 billion for fiscal year 1993, and $600 million for fiscal year 1994.

The authorizations for construction grants and revolving fund grants are designed to enable the States to capitalize revolving funds during the period from fiscal year 1986 through fiscal year 1990 when construction grants are still being made. In 1991, the grants for revolving funds are increased to the prior years' construction grants level, then gradually decreased over a 3-year period. This is intended to provide a transition period during which the funding of sewage treatment plants will move from a Federal grant program to a State revolving fund program.

The Environmental Protection Agency estimates, in its 1984 needs survey, that the Federal share, under existing law, for eligible treatment plants through the year 2000 is approximately $35.8 billion. This is almost twice the amount authorized by H.R. 8 for construction grants and revolving fund grants. The committee is optimistic that the combined construction grant and revolving fund grant programs will enable communities to meet the requirements of the act. This is because the revolving funds will provide a continuing supply of funds for assistance. The committee will, however, monitor very carefully the success of this approach, so that it can determine whether the Nation's needs for publicly owned sewage treatment plants will be met on a timely basis.

The bill also contains a number of other provisions to improve our efforts to restore and maintain the quality of our waters.

A program to encourage and assist States in the control of nonpoint sources of water pollution is established. Approximately 50 percent of the pollution entering our Nation's waters comes from nonpoint sources. In order to achieve adequate water quality it is absolutely essential that we begin to address the very serious problem of nonpoint sources of pollution.

The clean lakes provision of the Federal Water Pollution Control Act which establishes a grant assistance program to improve the water quality of lakes, is modified to make it applicable to saline, as well as freshwater, lakes. Also, grants are authorized to be made to States for priority projects for control of nonpoint sources of pollution which are contributing to the degradation of water quality in lakes.

There is a provision for the development and implementation of individual control strategies to achieve compliance with applicable water quality standards where it is determined that such compliance will not result from the application of best available technology and best conventional technology.

The maximum amount of a civil penalty for violating certain provisions of the act is increased from $10,000 per day to $25,000 per day.

A provision is added to the act to provide that dischargers or individuals who knowingly violate or cause the violation of certain of the act's requirements will be subject to criminal penalties of up to $50,000 per day and/or imprisonment for up to 2 years. Also, the assessment of administrative penalties is authorized for violations of the act. These are designed to substantially increase EPA's enforcement capability to ensure compliance with the act.

In addition to these provisions, we intend to offer a number of amendments designed to address other matters relating to the pollution control program.

The question of stormwater discharge permits has become a matter of considerable concern. Under existing law all facilities involving the discharge of stormwater, such as residential, commercial and industrial facilities, and separate storm sewers, are required to obtain a permit regulating the discharge. The Environmental Protection Agency is presently in the process of developing regulations relating to the discharge of stormwater. In the meantime, all facilities discharging stormwater are subject to the requirement to apply for and obtain a permit. We have addressed this problem by establishing procedures to be followed during the 4-year period expiring on December 31, 1989, and directing the Environmental Protection Agency to conduct a study and report to Congress on the regulation of stormwater discharges by December 31, 1987.

Under this amendment, the administrator shall not require a permit for discharges composed entirely of stormwater runoff unless the administrator determines, in the case of a class or category of discharges, that the class or category may be a significant contributor of pollutants to the navigable waters. Also, only those individual discharges which violate a water quality standard or which are significant contributors of a permit are required to obtain a permit.

In the case of discharges from industrial sites, EPA is directed to identify within 1 year those classes and categories which are required to apply for a permit. Within 6 months after the completion of the study on regulation of stormwater discharges, EPA is directed to develop final regulations identifying these classes and categories.

Finally, all discharges from municipal storm sewers must be regulated through the permit process.

The provisions of this amendment expire on December 31, 1989. This will give the Congress 2 years to consider the matter and enact appropriate legislation. Some concern has been expressed that EPA might not meet the date for submittal of the report and recommendations, thereby reducing the time available for the Congress to act. I wish to assure my colleagues that if the study is delayed we will exert our best efforts to obtain the results of the study and, if necessary, develop appropriate legislation whether the study is or is not available.

Another matter addressed by the amendments is the question of whether, and under what circumstances, a discharger may obtain a renewed, reissued or modified permit containing a less stringent effluent limitation.

The committee amendment provides that, for 2½ years after enactment, no effluent limitations which call for a lesser degree of treatment than being achieved under an existing BPJ (best professional judgment) or water quality based permit may be allowed, except as provided in a few limited situations. In addition, where water quality based effluent limitations are involved (limitations more strict than BAT because BAT does not result in water quality standards being met) no change in permit requirements may be made if it would result in a violation of water quality standards.

Section 24 of H.R. 8 provides for the assessment of administrative penalties for violation of the act. A hearing, in accordance with the provisions of the Administrative Procedures Act must be held if requested by the person to be assessed the penalty. The committee feels that the provision for such a hearing is necessary in order to allow the person being assessed the penalty an adequate opportunity to present his case and develop an adequate record for appeal, in the event such an appeal is sought. The committee also believes, however, that the hearing should be conducted as expeditiously as possible, in order to settle the matter of a penalty, and permit judicial review, in a timely manner.

Mr. Chairman, another important matter I wish to discuss concerns the difficulty in obtaining truly meaningful statistics on EPA enforcement actions and citizen suits. Information on the numbers of EPA and citizens' suits are not sufficiently informative, because they do not address those instances in which EPA and the Department of Justice institute judicial proceedings as a result of receiving notice that a citizen suit will be filed if a Federal action is not commenced. Also, it is difficult to make clear statistical comparisons either between EPA's regional offices or between the many environmental laws implemented by EPA where citizens suits are provided for. The situation is complicated even further by the fact that many States exercise enforcement authority in lieu of Federal enforcement. Information as to Federal enforcement activity, citizen suits, and the relationship between the two is necessary for the proper oversight of the environmental laws administered by EPA. The committee therefor directs EPA to improve its data collection on enforcement activities and to make this information available to the Congress periodically.

The last item I wish to address concerns the provision in the bill relating to fundamentally different factors. Section 18 provides that the Administrator may grant a variance from the requirements of an effluent limitation it it is determined that factors relating to the facilities, equipment, and processes of the discharger are fundamentally different than the factors considered in the establishment of the effluent limitation. Under an amendment we will offer, EPA must make a determination on an application within 180 days of its receipt. For applications made prior to enactment of this provision, EPA must make a final determination within 180 days after enactment. Many of the existing applications have been pending for a number of years. The committee expects that EPA will act expeditiously on final decisions relating to both existing and new applications. To ensure that this is done, EPA will be required to submit a report to Congress for our review every 6 months.

Mr. Chairman, H.R. 8, with the amendments we will offer, is a bill which will improve the Federal Water Pollution Control Program and better enable the goals of that program to be met. It is a good bill, a reasonable bill, and a necessary bill. I urge its enactment.

Mr. STANGELAND. Mr. Chairman, I yield myself such time as I may consume.

(Mr. STANGELAND asked and was given permission to revise and extend his remarks.)

Mr. STANGELAND. Mr. Chairman, I am pleased to rise in support of H.R. 8, the Water Quality Renewal Act of 1985. This legislation is the result of extensive hearings and concentrated efforts by many Members over the course of the past 4 years.

The chairman of our Public Works Committee, the gentleman from New Jersey [Mr. HOWARD] and the gentleman from Kentucky, the full committee's ranking Republican member [Mr. SNYDER], are to be complimented on the encouragement and leadership they have shown with respect to H.R. 8. Special recognition is also warranted for the chairman of our Subcommittee on Water Resources, the gentleman from New Jersey [Mr. ROE], who has worked tirelessly for the past two Congresses holding hearings, researching the issues, and perfecting the bill's, language.

The Clean Water Act, now being reauthorized and amended, has been successful, but it can be made more effective. The act has significantly improved the control of discharges of pollutants into our Nation's waters. It is leading to the cleanup of some of our most polluted waterways, including the St. Louis River in Minnesota, the Potomac River, and the Hudson River. Still, inadequacies of the Clean Water Act have become evident. The fish are sometimes too contaminated to eat. It has kept the Nation's waterways from getting any more polluted, despite substantial growth in industry and population over the past 13 years—a significant accomplishment. The fact remains, however, that overall water quality has not improved in the last 12 years as much as we would like.

Mr. Chairman, H.R. 8 represents a bipartisan effort to fashion a strong, efficient, balanced approach to ensuring cleaner water for all Americans. The bill continues a number of existing programs of the Federal Water Pollution Control Act and also establishes new important authorities which will help meet the goals of the act in a rational, feasible way.

The existing Water Pollution Control Program stems from the complete rewrite of earlier law that was incorporated into the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500. The 1972 act had as its goal to reduce and ultimately eliminate the discharge of pollutants from municipal sewage systems, industrial plants, and other sources into the Nation's waters. Important changes in the law were enacted in 1977. These so-called midcourse corrections included additional authorizations for the Construction Grants Program and the establishment of a program for encouraging innovative and alternative approaches to wastewater treatment. Other significant changes to the 1972 act occurred the 1981 amendments, which related primarily to the Construction Grants Program.

Under the Federal Water Pollution Control Act, the U.S. Environmental Protection Agency [EPA] is required to establish water quality criteria, technology-based effluent limitation guidelines, pretreatment standards, new source performance standards and a national permit program to regulate the discharge of pollutants. A grant program for construction of publicly owned treatment works provides the "carrot" for communities to reach the levels of treatment mandated in the law. States are given the responsibility for developing water quality management programs and for setting water quality standards. The act's technology based limitations prescribe minimum standards of performance for municipal and industrial dischargers without regard to the quality of receiving waters. Water quality standards, by contrast, identify intended uses of particular water bodies and, on the basis of water quality criteria guidance developed by EPA, set forth the biological and chemical conditions necessary to sustain those uses.

Under the act, direct dischargers of pollutants are classified as either point or nonpoint sources. To deal with point sources, the Clean Water Act provides for the National Pollutant Discharge Elimination System [NPDES] which incorporates and applies effluent limitations in individual permits to both municipal and direct industrial dischargers. Under these permits, dischargers are subject to both technology-based treatment requirements and, where necessary to protect a designated use, additional controls based on water quality standards. Technology-based standards also deal, in part, with pretreatment of industrial wastes from facilities that discharge into municipal sewer systems instead of directly into a particular water body. These facilities are referred to as "indirect dischargers." To prevent certain toxic pollutants in these dischargers' waste effluent from passing through a municipal treatment works insufficiently treated or from interfering with the operation of the treatment works, technology-based effluent pretreatment limitations are applied. Delays in getting this program in place and the potential negative impact on already well-performing local pretreatment programs have been continuing problems.

Technology-based does not mean that the agency prescribes the technology that must be used. Rather, EPA reviews the various treatment techniques presently in use or available in each industrial sector to determine what limitations are achievable using available methods. Once EPA adopts effluent limitations for a particular industry, each company or plant can use any method it chooses to achieve these limitations. In practice, however, this range of choice is limited by the availability of technology and its effectiveness in removing pollutants.

The 1972 amendments to the act directed EPA to establish a minimum level of technology based standards for publicly owned treatment works [POTW's] based on secondary treatment as defined by the agency, and to establish best practicable technology currently available [BPT] standards for industrial categories. Both are uniform national standards and had a compliance date of July 1, 1977. Under the 1972 amendments, EPA was also directed to establish a second level of control standards for industrial categories, based on best available technology economically achievable [BAT], to be complied with by July 1, 1983.

The 1972 amendments' control strategy for toxic pollutants required EPA to develop pollutant-specific effluent standards to be applied to all industrial categories regardless of technological or economic achievability. These effluent standards for toxic pollutants were to be based on the nature of the pollutant rather than on the technologies available to treat those pollutants. The 1972 act instructed EPA to, first, identify toxic pollutants, and then to issue effluent standards for those pollutants.

These initial provisions for the development of toxic pollutant standards proved to be cumbersome and time consuming. During the 5-year period immediately following passage of the 1972 amendments, EPA only managed to produce effluent standards for six toxic pollutant standards. The agency was sued by several citizen groups and, as a result of the suit, a consent decree, commonly referred to as the NRDC consent decree, was entered into in June of 1976.

In 1977, Congress passed amendments to Public Law 92-500 in the form of the Clean Water Act Amendments of 1977. The new act codified many of the provisions of the 1976 decree. It classified types of pollutants into conventional pollutants, toxic pollutants, and nonconventional pollutants. Conventional pollutants include those traditionally controlled by wastewater treatment systems, including biochemical oxygen demand [BOD], oil and grease, suspended solids, pH and fecal coliform. For industrial control of these traditional pollutants, Congress established separate technology-based control standards referred to as best conventional technology [BCT]. Toxic pollutants include the 65 pollutants and categories of pollutants identified in the NRDC Consent Decree and section 307(a) of the act. Further subcategories of this number have brought the total to 129 pollutants. Non-conventional pollutants is a catch-all category which includes pollutants not otherwise designated, such as phosphorus, nitrogen, and ammonia.

New compliance deadlines were also established under the 1977 amendments. BAT for toxic pollutants and BCT for conventional pollutants were required to be achieved by all industrial direct dischargers by July 1, 1984. BAT for nonconventional pollutants was to be achieved no later than July 1, 1987, with the possibility of environmental waivers under certain circumstances.

The construction grants amendments of 1981 significantly modified the program for Federal funding of sewage treatment plants that had been in the act since 1972. In 1981, the annual authorized funding level for the program was reduced from $5 billion per year to $2.4 billion per year. Under the 1981 amendments, what had been 75 percent Federal funding reduced to 55 percent in October 1984, and certain categories previously eligible for funding, such as collector sewers, became grant eligible only where a State's Governor chose to fund them under a 20-percent discretionary authority.

The bill to be considered today by the House, H.R. 8, builds on this background, making changes where needed and reinforcing existing parts of the act in order to more efficiently achieve our real goal: Maintenance of the highest practicable in-stream water quality throughout the Nation to support the many uses of that water by the American people.

Generally, H.R. 8 continues the $2.4 billion annual authorization for construction grants and authorizes a separate grant system to enable States to create revolving funds to help their communities construct needed sewage treatment plants. The bill makes eligible for grant assistance combined sewer overflow problems. It also extends the compliance dates for achieving the best available technology and best conventional technology requirements to reflect the delays which have occurred in the promulgation of the effluent limitations called for in the act.

In addition to these provisions, this year's bill, H.R. 8, provides for, among other things:

A 5-year reauthorization of a number of existing programs;

Revisions of some of the act's technology compliance deadlines;

A new non-point-source control program;

Expanded authority for the Governor to elect to use the existing 20-percent discretionary funding under the States' construction grant allotment for non-point-source projects;

Authority for administrative penalties;

Authorization for 10-year National Pollutant Discharge Elimination System [NPDES] permits and partial program delegation to the States;

Continued eligibility for combined sewer overflows [CSO's] and collector systems;

Specific authorization to issue effluent limitation variances based on fundamentally different factors;

Required passthrough of 205(j) grants to substate planning organizations;

A 1¼-percent set aside for investigation and auditing activities within the construction grants program; and

Several site-specific projects to deal with major problem areas.

One of H.R. 8's most innovative proposals is the bill's authorization of a new revolving fund program through which a State will be able to provide financing assistance to its political subdivisions and, upon repayment, be able to use that money again to construct needed pollution control facilities. These funds can be used for loans, guarantees, interest subsidies, and other nongrant purposes. Under this new authority many more communities will receive funding for construction of needed wastewater treatment facilities. Many communities throughout the Nation have waited in vain for Federal funding, being too far down on the State's priority list, and this new revolving fund program is designed to help those communities meet their requirements under the act.

There is one important area not covered by the legislation that I believe should be. Mr. Chairman, as you know, I advocate greater flexibility with the provisions contained in section 307 of the act requiring the application of national categorical pretreatment standards for indirect dischargers.

It's my view, and the view of many others, that as long as a municipality can adequately demonstrate to EPA that its locally developed system of pretreatment is at least as effective as the different national categorical pretreatment standards recommended by the agency, such a municipality should be afforded the oportunity to move forward with its own program

I believe that it's unwise to require compliance with Federal categorical standards when other less costly methods are available which are just as effective in achieving the goals of the act. Furthermore, such a rigid approach may inhibit the development of new initiatives that could greatly improve water quality.

Accordingly, when we are under the 5-minute rule for the bill, I will offer an amendment to H.R. 8 authorizing a demonstration program pertaining to a limited number of locally developed pretreatment systems which achieve pretreatment at least equivalent to that required under national standards but which employ a method of pretreatment which is different from the categorical pretreatment standards mandated by section 307(b) of the act.

My amendment would require EPA to select up to 40 municipal treatment programs nominated by the states for inclusion in a 5-year demonstration program. In order to be eligible to participate, the owner or operator of the treatment works would have to show that: First, the treatment works is in compliance with applicable secondary treatment and water quality based effluent limitations under section 301 and 302 and with all the requirements of its section 402 NPDES permit; second, that the locally-developed pretreatment system is at least as effective in presenting the pass-through of harmful pollutants as required by the national categorical standards; third, that the POTW can adequately demonstrate effective administration of an equivalent program, including requirements for sampling and monitoring; fourth, that the POTW has adequate enforcement authority to insure compliance with its equivalent system; and fifth, that the equivalent system will not impair safe use and disposal of resulting sludge.

The amendment would also call for annual reports to the Congress by the States on the effectiveness of the demonstration program and final report by EPA prior to the conclusion of the program.

Mr. Chairman, I realize that there are many who feel that any program mandated by EPA is always going to be better than one developed locally. I just frankly don't agree.

I have visited local pretreatment works, have talked to the people who run them, and I believe that there are very dedicated, imaginative, and capable professionals out there that are equal to the challenge of showing to the Federal Government that their programs are every bit as effective as Washington's, if not more so.

To deny them the opportunity to do so, is not only unfair to them, but it is also unfair to the goals of the Clean Water Act.

Therefore, Mr. Chairman, I would ask my colleagues to seriously consider the merits of my proposal and to support my amendment, which would do nothing more than allow states to propose and operate under equally effective approaches to federal pretreatment standards.

In closing, Mr. Chairman, let me just say that, with or without my equivalent local pretreatment demonstration program amendment, H.R. 8 is a vital and greatly needed bill. I can honestly say that this major environmental legislation is crucial to the districts of each and every Member of Congress and that each of us should vote for its passage. We must protect the future of the Clean Water Act. We must strengthen the Clean Water Act. We must finish the job we began 12 years ago.

Last year, this body approved by the overwhelming vote of 405 to 11 a bill quite similar to the one we bring to the floor today. Unfortunately, our colleagues in the other body were not successful in their efforts to bring Clean Water Act reauthorization legislation to floor consideration before the 98th Congress adjourned.

This year, we have a Senate-passed counterpart bill. This year, we are going to complete our work on this major environmental legislation. We are going to send to the President for his signature a Clean Water Act reauthorization bill of which we can all be proud. I believe that there is no reason why we can't duplicate the Senate's unanimous vote of approval in this House. I urge my colleagues to join in supporting the Water Quality Renewal Act of 1985.

□ 1400

Mr. ROE. Mr. Chairman, I yield 2 minutes to the gentleman from Georgia [Mr. Rowland].

Mr. ROWLAND of Georgia. Mr. Chairman, I rise in support of the committee bill and amendment package of H.R. 8. I have worked on this measure with my colleagues on the Public Works and Transportation Committee over the last few years, and I am pleased that we are able to bring the reauthorization of the Clean Water Act to the floor today.

I want to commend the chairman of the committee for his efforts in fashioning an effective water quality program. This measure builds upon the successes of the past and our hopes for the future of this Nation's waters.

In particular, I want to express my appreciation for the chairman's willingness to incorporate the recommendations I had made during the committee process to address the dilemma in issuing permits ad infinitum for common stormwater discharges.

Under existing law, the Environmental Protection Agency must require National Pollutant Discharge Elimination System [NPDES] permits for anyone who has stormwater runoff on their property. What we are talking about is potentially thousands of permits for churches, schools, residential property, runoff that poses no environmental threat and does not warrant the expense and dilution of personnel and resources that would be required to permit and monitor these harmless discharges.

It was not the intent of Congress that permits be required for every case of stormwater runoff, but due to recent court decisions mandating such extensive permitting, EPA must have the statutory authority to inject some reason back into this process.

The Senate has already adopted an amendment to effect most of the needed changes in the current requirements for NPDES permits. I plan to support the Committee amendment that similarly addresses this situation.

There are still some specific details to be ironed out during this process and I look forward to working with the Chairman to perfect this provision.

The following is the amendment which I believe addresses the existing inadequacy in the time allowed for the completion of the EPA study and the expiration of the exemptions for stormwater discharge permits:

In the matter proposed to be inserted on page 80 after line 14, as paragraph (3)(C) of section 402(1) of the Federal Water Pollution Control Act, strike out "ending on December 31, 1989" and insert in lieu thereof the following: ending on the date two years after the date the Administrator submits to Congress the report on methods of regulating stormwater discharges required by section 26(b)(2) of the Water Quality Renewal Act of 1985.

Mr. STANGELAND. Mr. Chairman, I yield 5 minutes to the gentleman from Connecticut [Mr. McKinney].

(Mr. McKINNEY asked and was given permission to revise and extend his remarks.)

Mr. McKINNEY. Mr. Chairman, I am delighted to take in today's debate on the Water Quality Renewal Act. As a cosponsor of this legislation, I would like to commend the members of the Public Works and Transportation Committee, particularly Chairman James Howard, Water Resources Subcommittee Chairman Robert Roe, and Representatives Gene Snyder and Arlan Stangeland, and their leadership in this critically important area of environmental law.

While the House in June of last year approved by an overwhelming margin a very similar water quality bill, the Clean Water Act rewrite was never enacted due to controversy in the other body. This Congress, however, has seen the other body act promptly on this matter, approving its version on June 13. With House action this week, Congress will stand in a good position to revise and extend the Clean Water Act this year.

When the House considers amendments to this bill later in the week, I had planned to offer an amendment to establish a National Estuary Program. This program was included in last year's House-approved measure, as well as in the legislation recently approved by the other body. However, as reported by the Committee on Public Works and Transportation, the Water Quality Renewal Act did not include this historic program.

At this time, however, I am pleased to find myself commending the committee leadership for having the foresight to include the National Estuary Program in their amendment to the Water Quality Renewal Act. Giving credit where credit is due, it was the Public Works and Transportation Committee who developed this plan during the 98th Congress. It encompasses the best and most practical approaches to estuarine pollution control, and is worthy of our strong support. I filed my amendment in the Congressional Record of July 17 to ensure that the House would be given the opportunity to debate this historic pollution control initiative. But because of the committee's commitment to this program, I am pleased to say that I will not have to offer my amendment to ensure this debate.

The Estuary Program, modeled after the existing Chesapeake Bay cleanup plan, would be the first real attempt to instill order into the often haphazard pollution control plans developed for estuaries. In cases of interstate sourced pollution, this program would direct the Administrator of the EPA to convene an interstate management conference to develop a comprehensive plan for water quality improvement. Each conference would include the EPA, the National Oceanic and Atmospheric Administration, representatives from each State, as well as representatives from interstate agencies with jurisdiction over the estuary.

Mr. Chairman, I also am pleased that the committee's version of the estuary plan includes priority consideration for four estuaries: Long Island Sound, Buzzards Bay, Delaware Bay, and Albermarle Sound. Over the last 2 years, I have initiated three pieces of correspondence with the committee leadership on this issue of priority consideration. The most recent letter was dated July 10 and signed by 16 of my colleagues, including the distinguished chairman of the Merchant Marine and Fisheries Committee, the Honorable Walter Jones. In this letter, we outlined our strong support for a National Estuary Program, as well as our recommendation that four bodies of water receive priority consideration.

In closing, I would like to stress my support for this significant pollution control measure. It is carefully crafted and, with adoption of the committee amendment, is worthy of our approval.

Mr. STANGELAND. Mr. Chairman, I yield 5 minutes to the gentleman from Wisconsin [Mr. Roth].

Mr. ROTH. Mr. Chairman, I want to commend the committee for the attention it has shown in this bill to the particular problems of the Great Lakes.

The Great Lakes constitute the largest single system of fresh water in the world and represent the Midwest's most precious and important natural resource. More than 29 percent of all Amercians and 30 percent of all Canadians live within the lakes' watershed. The lakes provide clear, dependable water supplies for residential and industrial consumption; an important transportation mode for moving goods and products; clean energy through hydro generation; and a recreational wonderland.

Water quality in the Great Lakes is a complex and difficult issue to define and resolve. Problems vary in magnitude and effects from lake to lake and place to place within a given lake. Significant progress has been made in solving Great Lakes water quality problems. However, the divergent and uncoordinated way in which many issues are addressed complicate their resolution.

The committee has recognized its duty to reserve and protect the Great Lakes by anticipating future challenges. This bill, with the full committee amendments, contains several provisions which will help coordinate Great Lakes policy.

The legislation would achieve the goals of the Great Lakes Water Quality Agreement of 1978. It calls for improved organization and definition of mission on the part of the Environmental Protection Agency, funding State grants for pollution control in the Great Lakes area and improved accountability for implementation of the agreement.

This authorization would further provide for a Great Lakes International Coordination Office within the EPA to take a more active role in coordinating activities and monitoring water quality. It is vital that the EPA more actively pursue its role of watchdog for water quality in the region.

The Great Lakes are a delicately balanced ecosystem. The necessity of maintaining this balance is vital if the region is to meet its economic potential. Solutions, policy directions, and actions affecting the environment can be accomplished only by Federal, State, and provincial, and local government action. That is why I commend the committee for taking an important step in the right direction by coordinating efforts to protect this vital resource.

● Mr. SNYDER. Mr. Chairman and my colleagues, it is with great pleasure that I rise in strong support of H.R. 8, the Water Quality Renewal Act of 1985.

H.R. 8 is the product of years of effort by the Committee on Public Works and Transportation and, in particular, our Subcommittee on Water Resources. We have had countless days of hearings where we received testimony from scores of witnesses. We have looked at every aspect of the Clean Water Act and the way that it is administered at the Federal, State, and local level. The bill we take up today is a synthesis of the suggestions for change from all parties affected by the Clean Water Act.

I want to congratulate the gentleman from New Jersey [Mr. HOWARD], who serves so ably as the chairman of the Committee on Public Works and Transportation, for his leadership and good judgment on this bill. I want also to thank the chairman and ranking Republican member of the Subcommittee on Water Resources, the gentleman from New Jersey [Mr. ROE] and the gentleman from Minnesota [Mr. STANGELAND], for their tireless efforts, their spirit of cooperation and especially for their comprehensive understanding of the issues.

Mr. Chairman, I want to emphasize that this is truly a bipartisan bill. The Members on this side of the aisle have always been strong supporters of environmental legislation in general and the Clean Water Act in particular. Last year's clean water authorization bill passed by the overwhelming margin of 405 to 11. The bill that has been developed this year is based on last year's bill, but has been refined to reflect new information and new needs. I would like to note that one area of significant difference is in the overall funding called for in the bill. Authorization levels have been significantly reduced from the levels provided for in last year's bill. Despite these significant reductions, this year's bill will not result in any community having to cut back in its program. H.R. 8 would continue funding of Clean Water Act programs which are no less, and in some cases more, than the current funding.

H.R. 8 will also establish new initiatitives in a number of areas to assist the Nation in achieving the goals of the act of reducing or eliminating the discharge or pollutants into our Nation's rivers, lakes, and streams. Specifically, the bill would establish a new, expanded program for control of nonpoint source pollution and would establish a new grant program to assist States in setting up revolving funds to finance future capital improvements by municipalities. This latter initiative will be available to provide a more flexible system of funding which will ultimately replace the construction grant program. These revolving funds would be available for use by localities to help pay for improvements needed to achieve water quality objectives without the myriad of Federal procedures and requirements that are applicable under the construction grant program.

While I fully support the bill that has been developed by our committee, I also recognize that there are Members who feel that the bill can and should be improved. I am aware that the gentleman from Minnesota, Mr. **Stangeland**, who has served so ably as the ranking Republican member on the subcommittee, will offer an amendment to allow States and localities an opportunity to demonstrate that they have the capability to implement pretreatment programs that are at least as effective as the Federal categorical pretreatment program mandated under section 307 of the act. I believe that this amendment is one that makes eminently good sense and is deserving of your careful consideration and support.

Mr. Chairman, I would hope that we can move quickly, though deliberately, to final passage of H.R. 8. I would hope that we can achieve the level of support that we had last year, if not higher. With the support of our colleagues on this bill, I am very confident that we will have meaningful, comprehensive clean water legislation in this Congress. Last year, we had the support of this body. However, the Senate failed to take their counterpart bill to the floor. This year the Senate has already passed their bill, and I note that they did so without a single vote in opposition. I would hope that this body can achieve a comparable level of support so that we can reconfirm the Congress' unquestioned commitment to the Clean Water Act and need to protect and enhance the quality of the Nation's waters.●

● Mr. EDGAR. Mr. Chairman, I rise in support of H.R. 8 and ask unanimous consent to revise and extend my remarks.

Mr. Chairman, I am a cosponsor of H.R. 8 and a strong supporter of the many provisions of this bill which will advance our efforts to clean up our Nation's waters. I strongly commend my colleague **Bob Roe** of New Jersey, the chairman of the Subcommittee on Water Resources, for bringing this bill before us today. Along with the ranking minority member of the subcommittee, **Arlan Stangeland**, and the chairman of the full Public Works and Transportation Committee, **Jim Howard**, he has worked diligently to produce this reauthorization of the Clean Water Act.

As my colleagues in the House are aware, the Clean Water Act was passed by Congress in 1972 to reduce and ultimately eliminate pollution of our Nation's waters by municipal sewage systems and industrial plants. We established a goal of achieving fishable, swimmable water in rivers, lakes, and streams across our Nation.

Unfortunately, many of the programs and general authorizations contained in the original act have lapsed since 1982, and we have been operating without a regular authorization since that time. The passage of H.R. 8 will fill that gap and will also help address a concern noted in our committee's report on the bill:

> The 1972 act has resulted in significant improvements in the control of discharges of pollutants into the Nation's waters. Studies indicate that at the very least, pollution loads have not increased even though substantial increases in population and industrial discharges have occurred. However, the program has not performed as well as expected due primarily to uncertainties in funding, insufficient levels of funding and delays in promulgation of effluent standards for industrial dischargers.

It is particularly important to reauthorize the Clean Water Act to assure fishable, swimmable water and preserve our environment. But clean water is also important to our continued economic progress. It is commonsense that a healthy environment is essential in attracting new growth and revitalizing our older industries. Our economy needs clean water if it is truly to continue to prosper; otherwise, we face the prospect of wasting a valuable and irreplaceable resource for short-term, elusive paper gains.

Therefore, I am pleased that the centerpiece of this legislation is the authorization of the sewer construction grants program through fiscal year 1990 at current funding levels. This level of funding is vital in preserving and improving water quality throughout the country. In my own State of Pennsylvania, the construction grants program has helped hundreds of communities build much needed sewerage collection and treatment systems while generating over 4,300 construction-related jobs annually.

All of us are painfully aware of the tremendous budget deficits facing our Nation and each of our committees has tried to operate within overall spending constraints. Therefore, the committee also provides for a smooth long-term transition from a grants program to alternative State programs by including in H.R. 8 a separate grant system enabling States to establish revolving funds to assist communities in constructing needed sewage treatment facilities. The program will assure states of maximum flexibility in meeting their sewer construction needs.

In addition, the bill creates a valuable new grant program for the States to control nonpoint pollution from rural and urban runoff. In the committee substitute that Chairman **Howard** will propose, our colleagues will also find funding for targeted efforts to clean up the Cheasapeake Bay and other bays and estuaries, and a separate provision adding specific requirements to put the EPA on a schedule of publishing guidelines for the safe use and disposal of sewage sludge.

It is my understanding that Chairman Roe plans to amend the committee substitute to incorporate several further provisions to preserve the environmental gains of the Clean Water Act's first 13 years. Specifically, Chairman Roe's amendment will strengthen the Howard substitute's provisions on "backsliding," or the relaxation of clean water requirements when a permit is reissued. I am pleased that the chairman will include additional antibacksliding provisions in his proposed amendment.

Next, the amendment will modify the substitute's section on administrative civil penalties. As originally drafted, H.R. 8 would give the EPA new authority to assess administrative civil penalties without going to court. However, if the EPA chose to exercise this authority, citizens would be precluded from seeking redress in cases of violation of the Clean Water Act. I understand that the Roe amendment will allow citizens to go to court in the case of continuing violations, which I believe is a fair compromise.

I am pleased that H.R. 8 includes a section clarifying the procedure for fundamentally different factors [FDF] variances, which were originated by the EPA without and specific approval by Congress. The FDF section could be strengthened, though, by setting a firm deadline for the EPA to act on variance applications, and by covering all standards, not just those issued after H.R. 8 is enacted into law. I believe that these issues will be covered in Chairman Roe's amendment.

Finally, the chairman has covered the issue of modifications for nonconventional pollutants in his proposed substitute. I hope, however, that the final version of the substitute will preserve legislative control over this area by giving Congress the aurthority to expand the list of eligible pollutants rather than leaving that responsibility with the EPA.

I am confident that there will be a full debate of these and other concerns when they consider amendments to H.R. 8. I know that all Members of this House want to produce a responsible Clean Water Act reauthorization which preserves and strengthens our commitment to tough measures to clean up pollution. In general, this is an admirable bill which does just that. The proposed substitute to this bill and the amendment to it developed by Chairman Roe include substantial changes and modifications which address the concerns of many. I look forward to working with the chairman and my colleagues to pass this major piece of environmental legislation in the 99th Congress.●

● Mr. FIELDS. Mr. Chairman, I rise in strong support of the passage of H.R. 8, the Water Quality Renewal Act of 1985.

This important legislation is the product of several years of labor and I compliment the distinguished subcommittee chairman and ranking minority member, Mr. Roe and Mr. Stangeland, for their perseverance and leadership in producing such an excellent reauthorization of the landmark Clean Water Act.

H.R. 8 is a tribute not only to their tireless efforts but also those of Chairman James Howard and Congressman Gene Snyder.

A debt of gratitude is owed to these fine public servants who, through this legislation, have renewed our Nation's commitment to clean water in our rivers, lakes, and streams.

Mr. Chairman, while there are a number of key provisions contained within this bill, including an extension of the Wastewater Treatment Program, I intend to confine my remarks to section 26(f) of H.R. 8.

Incorporated within this section is the language of my bill to improve water quality in the Lake Houston watershed which is located in my congressional district.

Mr. Chairman, Lake Houston is a 12,000-acre manmade lake located northeast of Houston within Harris County, TX. Owned by the city, Lake Houston was created to provide city residents with an alternative source of drinking water to replace the area's rapidly depleting groundwater supply.

Based on current needs, it is expected that the lake will continue to provide drinking water to some 40 percent of the city's population.

As the Member of Congress who proudly represents the Lake Houston area, I've long recognized the importance of this vital watershed in providing both safe drinking and recreational opportunities for thousands of my constituents.

For these reasons, I have viewed, with alarm, the periodic increases of fecal coliform bacteria in the lake. In fact, during a period last year, the Houston Water Department found that 12 of its 14 sampling locations around the lake exceeded the pollution standards for contact recreation.

While water quality in the lake has fluctuated in recent months, the problem of fecal coliform bacteria remains a serious and unresolved matter.

In response to this problems, I have worked closely with the members of the House Public Works and Transportation Committee. I am extremely grateful that my Lake Houston language has been included within H.R. 8. I am convinced it will have a very significant and positive impact on water quality in this vital watershed.

As written, the amendment is designed to accomplish three objectives. First, it authorizes the Federal Environmental Protection Agency, in cooperation with the State of Texas, to study the water quality problems in the lake and to report their findings to the Congress within 1 year.

Second, it directs EPA to set up a comprehensive monitoring system of the more than 200 wastewater treatment plants that are located in and around Lake Houston. With the tremendous population growth in this area, the number of wastewater treatment plants has increased dramatically. It is these plants, or at least some of them, which have been identified as the source of the pollution problem.

Instead of simply gathering water samples from a few locations, my amendment will allow EPA to comprehensively monitor the discharges of most, if not all, of the wastewater treatment plants.

Finally, the amendment provides EPA with the authority to undertake any interim or emergency cleanup measures that may become necessary. In this way, EPA has the flexibility to respond to any emergency in a timely and expeditious manner.

In order to carry out these functions, my amendment authorizes $10 million to both study and resolve this serious problem.

Mr. Chairman, I anticipate the majority of the funds will be used by EPA to monitor the various treatment plants. In addition, this money will be available for any necessary clean-up efforts to ensure that Lake Houston remains a source of clean drinking water and safe recreational opportunities.

Mr. Chairman, with the enactment of my amendment, we will not only guarantee the water quality of Lake Houston but we will prevent the development of a hysteria that Lake Houston is a dirty, polluted body of water.

Mr. Chairman, Congress made a commitment to the American people, through the Clean Water Act that the Federal Government would improve and maintain the highest quality of our precious water resources.

I believe passage of the Water Quality Renewal Act of 1985 will continue that vital commitment to both our Nation and to the people of the Eighth Congressional District. We must ensure that in the years ahead, our rivers, lakes, and streams are safe and pure for all Americans.

I urge the enactment of H.R. 8.

Thank you, Mr. Chairman.●

● Mr. JEFFORDS. Mr. Chairman, I rise in strong support of the amendment to be offered by the gentleman from Massachusetts [Mr. Conte] and urge all my colleagues to give this initiative their full consideration and support. I want to commend my good friend from the mountains of Massachusetts, Mr. Conte, for offering today's amendment to control the damaging environmental effects of acid rain. This is a belatedly historic occasion, as this represents the first time we have had an opportunity to discuss this national and international problem on the House floor. Our response to this issue to date reminds me a little of Emperor Nero and the burning of Rome.

You may ask why are we discussing acid rain during a debate on the Water Quality Renewal Act? Precisely because acid deposition results in a serious deterioration in the water quality of high mountain lakes, ponds and streams. The impacts can be so devastating that a water body can be left sterile and devoid of all aquatic life.

On numerous occasions I have urged by colleagues to take notice of the serious effects of this byproduct of our modern age. The official national line may be that there is still a need to study the cause and effect relationship between sulfur dioxide emissions and environmental damage. But in Vermont, where we bear the brunt of a disproportionate share of acid rain fallout, the line is that the studies are in, the effects are clear, so let's get on with controlling this environmental menace.

Smokestack emissions from utilities and industries are akin to the nonpoint source pollutants addressed in other sections of the Water Quality Renewal Act. Dispersed high in the atmosphere by behemoth smokestacks, sulfur dioxide and nitrogen oxide emissions cover a broad downwind area; falling to the ground as damaging acid rain miles and miles from the original source.

Vermont, along with much of the New England region, is highly susceptible to the effects of acid rain. Not only are we downwind of the primary sources of smokestack emisisons, our geologic formations are extremely sensitive to acidic precipitation. Bedrock with a low chemical buffering capacity cannot neutralize the acidic composition of acid rain. Geologic surveys show that well over 50 percent of Vermont is sensitive to acid rain with medium to no buffering capacity. This area includes most of the Green Mountain and Taconic Mountain ranges and all of the Green Mountain National Forest.

Since 1979, the Vermont Agency of Environmental Conservation has declared 10 high-altitude lakes in these sensitive areas as dead. All of these lakes have displayed high acidity. The agency has also listed 25 lakes in the Green Mountain National Forest as "threshold lakes," meaning that their buffering capacity has been so eroded over the years that their natural ability to rebound from an acidic rain event has been virtually destroyed.

The effects of acid rain are already evident in Vermont and given the sensitivity of a large portion of our State we can only expect the damages to increase. This situation concerns Vermonters and in the Yankee tradition this concern has not been kept quiet. This past March at our annual town meeting day, more than half of our towns felt it was their duty to send Washington a message on acid rain. A resolution urging the Environmental Protection Agency to do all in its power to institute controls over the sources of acid rain was considered at 154 town meetings. It was adopted at all but two and at most by unanimous consent.

This is not the first time that Vermonters have spoken out on this issue. In 1983 the Vermont Legislature adopted a resolution calling on the President and Congress to enact legislation to reduce sulfur dioxide emissions by one-half by 1990. My own legislative survey of last year found 95 percent of the respondents in agreement that something had to be done to control acid rain. Out of this group, an impressive 81 percent were willing to bear a portion of the cost of a cleanup program as long as it meant something would get done.

Where our Government has not acted, the New England region has taken the initiative to control our own, albeit small, contribution to the acid rain problem. Recently the New England Governors and the Eastern Canadian Premiers agreed to a program to reduce sulfur dioxide emissions from within our region. This international effort marks the first time that a concerted effort will be made to control this problem. And this is by a region that is the primary victim of acid rain in North America.

The acid rain amendment to the Water Quality Renewal Act presented here today supports each of the initiatives I have outlined. This is control legislation, calling for reduction goals of 12 million tons for sulfur dioxide emissions and 4 million tons for nitrogen oxides, it is a nationwide plan with each State contributing to the cleanup campaign based on their contribution and it includes a funding mechanism with contributions from all electricity users. Vermonters support this approach, we are willing to help with the solution even though we are not a source of the problem. I hope all States can display as much regard for our environment.

Mr. Chairman, I again want to commend Mr. Conte for this opportunity to debate acid rain on the House floor. I hope each and every one of my colleagues will give this initiative their full support when it is issued tomorrow. Our environment cannot wait.●

● Mr. CONTE. Mr. Chairman, I rise in support of this effort to protect and preserve the quality of our Nation's water.

With a goal to make our waters drinkable, fishable, and swimmable once again, the Clean Water Act is an important environmental safeguard. However, there is one pressing water quality issue that is not addressed in this legislation. Acid rain poses a national and potentially disastrous threat to the quality of water in this country. Lakes, streams, and reservoirs are dead and dying. In some cases, entire ecosystems are threatened. And most tragically, our drinking water supplies are being contaminated by this "silent killer"—acid rain.

To address this widespread threat to our water quality, I plan to offer an amendment to the bill providing for a comprehensive acid rain control program designed to reduce sulfur dioxide by 12 million tons in 10 years. I realize this is an unusual procedure, but we must act now to control acid rain before the damage is fatal and irreversible.

The time for study is over. The case for acid rain control is so compelling that any reasonable person willing to examine the facts would be moved to action. And this is all I'm asking. For years, this issue has been the subject of countless scientific studies, hundreds of hearings and almost 100 pieces of legislation. Yet during this time, acid rain control legislation has never been debated on the floor of either body of Congress. The economic interests of a few must not override the concern expressed by many that acid rain should be controlled now, before it's too late.

Just look at the facts. Acid rain has a devastating effect on water quality.

In the Eastern States, including the Midwest, OTA estimates that 17,000 lakes and 112,000 miles of stream are at risk from acid rain.

In Massachusetts, over 200 waterbodies are already dead—acidified with no signs of life. One study showed the 82 percent of the surface water in my State is vulnerable to long term acidification. And 20 percent of the water bodies, including the Quabbin Reservoir, are critically close to losing their capacity to neutralize acid.

Let me tell you about the Quabbin, a reservoir that supplies drinking water to the city of Boston. With 85 percent of the service pipes make of lead, the city must spend $1.3 million annually to treat the acidic water from the Quabbin. This deadly combination—lead pipes and corrosive water—presents a significant human health risk.

The damage caused by acid rain is not limited to the Northeast region. In Wisconsin, for example, the Department of Natural Resources reported that 302 lakes in that State are now dead—killed by acid rain—and that another 1,400 are extremely threatened and probably will be dead before long. Recent studies have also documented acid rain damage in the Rocky Mountain region and in the South.

It's clear that in Massachusetts and across the country, the acid reign of terror has ravaged the environment. This threat to our water quality, our health, forests and natural resources must be addressed on a national level in a timely fashion.

We can't afford to wait any longer.●

□ 1410

Mr. STANGELAND. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. ROE. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore [Mr. Rowland of Georgia] having assumed the chair, Mr. Gonzalez, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 8) to amend the Federal Water Pollution Control Act to provide for the renewal of the quality of the Nation's waters, and for other purposes, had come to no resolution thereon.

WATER QUALITY RENEWAL ACT OF 1985

The SPEAKER pro tempore (Mr. Murtha). Pursuant to House Resolution 222 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill H.R. 8.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 8) to amend the Federal Water Pollution Control Act to provide for the renewal of the quality of the Nation's waters, and for other purposes, with Mr. Reid in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Monday, July 22, 1985, all time for general debate had expired.

Pursuant to the rule, the substitute committee amendment recommended by the Committee on Public Works and Transportation now printed in the reported bill shall be considered as an original bill for the purpose of amendment under the 5-minute rule.

Pursuant to House Resolution 222 and the order of the House of July 22, 1985, immediately after the enacting clause is read, it shall be in order to consider the amendments to the committee substitute printed in the Congressional Record of July 16, 1985, and additional amendments by, and if offered by, Representative Howard which shall be considered en bloc and shall be in order although amending portions of the substitute not yet read for amendment.

The Clerk will read the enacting clause.

The Clerk read as follows: *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

AMENDMENTS OFFERED BY MR. HOWARD

Mr. HOWARD. Mr. Chairman, I offer a series of amendments en bloc in accordance with the unanimous-consent request granted yesterday.

The Clerk read as follows:

Amendment offered by Mr. Howard: Page 35, after line 4, insert the following:

(e) Availability of Certain Funds for Non-Federal Share.—Notwithstanding any other provision of law, Federal assistance made available by the Farmers Home Administration to any political subdivision of a State may be used to provide the non-federal share of the cost of any construction project carried out under section 201 of the Federal Water Pollution Control Act.

Page 44, strike out lines 6 through 17 and insert in lieu thereof the following:

"(3) On October 1 of each fiscal year beginning after September 30, 1985, the States of New York, New Jersey, and Connecticut shall pay to the Interstate Sanitation Commission established by such States by interstate compact, or shall enter into a legally binding agreement with such Commission to pay to such Commission, $900,000 (in the case of New York and New Jersey) and $200,000 (in the case of Connecticut) to carry out the functions of such Commission under this Act. If any such State does not make a payment, or enter into a legally binding agreement with respect to a payment, in the amount requried under the preceding sentence for a fiscal year, the Administrator shall reserve, from the sums available to such State under this subsection for such fiscal year, an amount equal to the difference between the amount required to be paid or committed by such sentence for such fiscal year and the amount paid or committed by such State for such fiscal year. Sums so reserved shall be used by the Administrator to make a grant for such fiscal year to such Commission to carry out such functions.

Page 45, line 21, strike out "substantially" and insert in lieu thereof the following: "Significantly assist in encouraging participation by such organizations in the development of wastewater treatment programs and significantly".

Page 51, after line 13, insert the following:

"(8) Consistency with planning requirements.—The State may provide financial assistance from such revolving fund only with respect to a project which is consistent with plans, if any, developed under sections 205(j), 208, and 303(e) of this Act.

Page 53, after line 11, insert the following:

"(3) Reservation of funds for planning.—Each State shall reserve each fiscal year one percent of the sums allotted to such State under this section for such fiscal year, or $100,000, whichever amount is greater, to carry out planning under sections 205(j), 208, and 303(e) of this Act.

Page 53, line 12, strike out "(3)" and insert in lieu thereof "(4)".

Page 54, after line 7, insert the following new section:

SEC. 17. MODIFICATION FOR NONCONVENTIONAL POLLUTANTS.

(a) In General.—Section 301(g) is amended by redesignating paragraph (2) (and any references thereto) as paragraph (3) and by striking out all that precedes subparagraph (A) of paragraph (1) and inserting in lieu thereof the following:

"(g)(1) The Administrator, with the concurrence of the State, may modify the requirements of subsection (b)(2)(A) of this section with respect to the discharge from any point source of ammonia, chlorine, color, iron, and total phenols (4AAP) (when determined by the Administrator to be a pollutant covered by subsection (b)(2)(F)). The Administrator may—

"(A) add any pollutant to the list of pollutants for which modification under this section is authorized (except for pollutants identified pursuant to section 304(a)(4) of this Act, toxic pollutants subject to section 307(a) of this Act, and the thermal component of discharges), if the Administrator determines that there are; or

"(B) remove any pollutant from such list if the Administrator determines that there are no longer;

satisfactory test methods and data available to make the determination required by paragraph (2).

"(2) A modification under this subsection shall be granted only upon a showing by the owner or operator of such point source satisfactory to the Administrator that—".

(b) Application; Limitation on Effect.—The amendment made by subsection (a) shall apply to all requests for modifications under section 301(g) of the Federal Water Pollution Control Act pending on the date of the enactment of the Water Quality Renewal Act of 1985, and shall not have the effect of extending the deadline established in section 301(j)(1)(B) of such Act.

Page 54, after line 7, insert the following:

SEC. 18. DISCHARGES INTO MARINE WATERS.

(a) Consideration of Other Sources of Pollutants.—Section 301(h)(2) is amended by striking out "such modified requirements will not interfere" and inserting in lieu thereof the following: "the discharge of pollutants in accordance with such modified requirements will not interfere, alone or in combination with pollutants from other sources,".

(b) Limitation on Scope of Monitoring.—Section 301(h)(3) is amended by inserting before the semicolon at the end therefore the following: "and the scope of such monitoring is limited to include ony those scientific investigations which are necessary to study the effects of the proposed discharge".

(c) Urban Area Pretreatment Program.—Section 301(h) is amended by redesignating paragraphs (6) and (7), and any references thereto, as paragraphs (7) and (8), respectively, and by inserting after paragraph (5) the following new paragraph:

"(6) in the case of any treatment works serving a population of 50,000 or more, with respect to any toxic pollutant introduced into such works by an industrial discharger for which pollutant there is not applicable pretreatment requirement in effect, the applicant has in effect a pretreatment program which, in combination with the treatment of discharges from such works, removes the same amount of such pollutant as would be removed if such works were to apply secondary treatment to discharges and if such works had no pretreatment program with respect to such pollutant;".

(d) Primary Treatment for Effluent.—Section 301(h) is amended by striking out the period at the end of paragraph (8) (as redesignated by subsection (c) of this section) and inserting in lieu thereof a semicolon and by inserting after such paragraph (8) the following new paragraph:

"(9) no effluent will be discharged from such works which does not receive primary treatment by screening, sedimentation, and skimming, and treatment for disinfection where necessary, and which does not meet the criteria established under section 304(a)(1) after initial mixing in the waters surrounding or adjacent to the point at which such effluent is discharged; and".

(e) Urban Area Removal Credits.—Section 307(b)(1) is amended by adding at the end thereof the following: "In any case described in the preceding sentence in which the treatment works serves a population of 50,000 or more, such pretreatment standards shall be revised as provided in the preceding sentence if—

"(i) there exists an effluent limitation on such treatment works for the pollutant and the revised requirement will not result in the effluent violating such effluent limitations;

"(ii) the revised requirement will not result in interference with the method of disposal or reuse of sludge from the treatment works; and

"(iii) the revised requirement will not result in a pollutant interfering with the operation of such treatment works.".

(f) Discharge of Pollutant Into Marine Waters Defined.—Section 301(h) is amended by striking out the second sentence and inserting in lieu thereof the following: "For the purposes of this subsection, the phrase 'the discharge of any pollutant into marine waters' refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone.".

(g) Grandfather of Certain Applicants.—The amendments made by subsections (a), (c), (d), and (f) of this section shall not apply to any person whose application for a permit under section 301(h) of the Federal Water Pollution Control Act has been tentatively or finally approved by the Administrator on or before the date of the enactment of this Act.

Page 54, after line 7, insert the following:

SEC. 19. FILING DEADLINE FOR TREATMENT WORKS MODIFICATION.

(a) Elimination.—Section 301(i)(1) is amended by striking out the second sentence.

(b) Applicability.—The amendment made by subsection (a) shall not apply to those treatment works which are subject to a compliance schedule established before the date of the enactment of this Act by a court order or a final agency order.

Page 54, after line 7, insert the following:

SEC. 20. APPLICATION FOR OCEAN DISCHARGE MODIFICAITIONS.

Section 301(j)(1)(A) is amended by inserting before the semicolon at the end thereof the following: ", except that a publicly owned treatment works which before December 31, 1982, had a contractual arrangement to use a portion of the capacity of an ocean outfall operated by another publicly owned treatment works which has applied for or received a modification under subsection (h) of this section, may apply for a modification of subsection (h) in its own right not later than 30 days after the date of the enactment of the Water Quality Renewal Act of 1985".

Page 54, line 10, insert "(a) Extension of Deadline.—" before "Section".

Page 54, after line 13, insert the following:

(b) Extension to Conventional Pollutants.—Section 301(k) is amended by inserting "or (b)(2)(E)" after "9b)(2)(A)" each place it appears.

Page 54, line 15, before the period insert "AND PRETREATMENT STANDARDS".

Page 54, line 24, before the comma insert the following: "or any national categorical pretreatment standard under section 307(b)".

Page 55, line 2, before "if" insert the following: "or such standard with respect to the introduction of any pollutant by such person".

Page 55, line 3, after "person" insert the following: "or, in the case of such standard, factors relating to the facilities, equipment, and processes of the treatment works".

Page 55, line 5, after the period insert the following: "An effluent limitation or pretreatment standard established under such variance may not be less stringent than is justified by the factors that are fundamentally different. A variance may not be granted under this subsection if it would produce a significantly adverse effect on the environment (other than on water quality).".

Page 55, line 8, after "limitation" insert "or pretreatment s[illegible]".

Page 55, line 1[illegible] [illegible]tion" insert "or standard[illegible]

Page 55, line [illegible] the maximum extent prac[illegible]

Page 55, line [illegible] "limitations" insert "and p[illegible]rds".

Page 55, line 23, after "[illegible]" insert "or pretreatment standard".

Page 56, line 1, before "[illegible] established" insert "or standard".

Page 56, strike out line 3 and insert in lieu thereof the following:

(b) Savings Clause.—

(1) In general.—Except as provided in paragraph (2), the amendment made by sub-

Page 56, line 2, strike out the quotation marks and the final period.

Page 56, after line 2, insert the following:

"(6) Application fee.—The Administrator shall establish and collect a fee from each applicant for a variance under this subsection. Such fee shall be in an amount not more than an amount that reflects the reasonable administrative costs directly incurred in reviewing and processing applications for such variance. All amounts collected by the Administrator under this paragraph shall be deposited in the general fund of the Treasury.

"(7) Reports.—Every six months after the date of the enactment of this subsection, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives a report on the status of applications for variances from effluent limitations under section 301 or 304 of this Act or any national categorical pretreatment standard under section 307(b) of this Act filed before, on, or after such date of enactment.".

Page 56, line 7, before "established" insert "and pretreatment standards".

Page 56, after line 8, insert the following:

(2) Exceptions.—

(A) Factor to be considered.—In deciding whether to deny or approve an application filed before the date of the enactment of this Act for a variance from an effluent limitation under section 301 or 304 of the Federal Water Pollution Control Act or any national categorical pretreatment standard under section 307(b) of such Act which has not been denied or approved on or before such date of enactment, the Administrator shall consider any requirements contained in effluent guidelines issued after the date of such filing.

(B) Time limit for decision.—The Administrator shall approve or deny any application referred to in subparagraph (A) within 180 days after such date of enactment; except that if the applicant amends such application to take into account any new effluent guidelines issued after the date of filing of such application, the Administrator shall deny or approve such amended application within 180 days after the date of such amendment.

Page 56, after line 8, insert the following:

SEC. 19. COAL REMINING OPERATIONS.

Section 301 is amended by adding at the end thereof the following:

"(n) "(o) Modified Permit for Coal Remining Operations.—

"(1) In General.—Subject to paragraphs (2) through (4) of this subsection, the Administrator, or the State in any case which the State has an approved permit program under section 402(b), may issue a permit under section 402 which modifies the requirements of subsection (b)(2)(A) of this section with respect to the pH level of any pre-existing discharge, and with respect to pre-existing discharges of iron and manganese from the remined area of any coal remining operation or with respect to the pH level or level of iron or manganese in any pre-existing discharge affected by the remining operation. Such modified requirements shall apply the best available technology economically achieveable on a case-by-case basis, using best professional judgment, to set specific numerical effluent limitations in each permit.

"(2) Limitations.—The Administrator or the State may only issue a permit pursuant to paragraph (1) if the applicant demonstrates to the satisfaction of the Administrator or the State, as the case may be, that the coal remining operation will result in the potential for improved water quality from the remining operation but in no event shall such a permit allow the pH level of any discharge, and in no event shall such a permit allow the discharges of iron and manganese, to exceed the levels being discharged from the remined area before the coal remining operation begins. No discharge from, or affected by the remining operation shall exceed state water quality standards established under section 303 of this Act.

"(3) Definitions.—For purposes of this subsection—

"(A) the term 'coal remining operation' means a coal mining operation which begins after the date of enactment of this subsection at a site on which coal mining was conducted before the effective date of the Surface Mining Control and Reclamation Act of 1977;

"(B) the term 'remined area' means only that area of any coal remining operation on which coal mining was conducted before the effective date of the Surface Mining Control and Reclamation Act of 1977; and

"(C) the term 'pre-existing discharge' means any discharge at the time of permit application under this subsection.

"(4) APPLICABILITY OF STRIP MINING LAWS.—Nothing in this subsection shall affect the application of the Surface Mining Control and Reclamation Act of 1977 to any coal remining operation, including the application of such Act to suspended solids.".

Page 58, after line 17, insert the following:

SEC. 22. INSPECTION AND ENTRY.

(a) IN GENERAL.—Section 308(b) is amended by striking out all that follows "Code" and inserting in lieu thereof a period and the following: "Any authorized representative of the Administrator (including an authorized contractor acting as a representative of the Administrator) who knowingly or willfully publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information which is required to be considered confidential under this subsection shall be fined not more than $1,000 or imprisoned not more than one year, or both. Nothing in this subsection shall prohibit the Administrator or an authorized representative of the Administrator (including any authorized contractor acting as a representative of the Administrator) from disclosing records, reports, or information to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act.".

(b) CONFORMING AMENDMENT.—Section 308(a)(B) is amended by inserting "(including an authorized contractor acting as a representative of the Administrator)" after "or his authorized representative".

Page 58, line 19, insert "(a) IN GENERAL.—before "Section".

Page 62, after line 24, insert the following:

(b) CONFORMING AMENDMENT.—Section 404(s)(4) is repealed. Paragraph (5) of section 404(s) (and any references thereto) is redesignated as paragraph (4).

Page 61, after line 2, insert the following:

"(3) KNOWING ENDANGERMENT.—(A) Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than fifteen years, or both. A defendant that is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than $1,000,000.

"(B) For the purpose of subparagraph (A) of this paragraph—

"(i) in determining whether a defendant who is an individual knew that his conduct placed another person in imminent danger of death or serious bodily injury—

"(I) the person is responsible only for actual awareness or actual belief that he possessed; and

"(II) knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant;

except that in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information;

"(ii) it is an affirmative defense to prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

"(I) an occupation, a business, or a profession; or

"(II) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent;

and such defense must be established by a preponderance of the evidence;

"(iii) the term 'organization' means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons; and

"(iv) the term 'serious bodily injury' means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss of impairment of the function of a bodily member, organ, or mental faculty.

Redesignate succeeding paragraphs on pages 61 and 62 accordingly. .

Page 64, line 2, after "violation" insert the following: "of section 301 of this Act (as it relates to section 404 of this Act) or is in violation".

Page 64, line 10, insert after the period the following: "The Administrator or the Secretary may not assess a civil penalty under this subsection against any person with respect to a violation if the Administrator or Secretary, as the case may be, has assessed a civil penalty under this subsection against such person with respect to the same violation or a violation having substantially the same cause or arising out of substantially the same conditions."

Page 66, strike out line 19 and all that follows through line 2 on page 67.

Page 67, line 3, strike out "(F)" and insert in lieu thereof "(E)".

On page 68, line 14, after the period insert the following: Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in the first sentence of this paragraph shall be required to pay, in addition to such amount and interest, attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter".

Page 69, line 4, strike out "is imposed" and insert in lieu thereof "has been paid".

Page 70, line 3, after "penalty" insert "for the alleged violation".

Page 70, line 4, after "Act" insert the following: "or under a comparable State law, as the case may be".

Page 70, after line 4, insert the following:

SEC. 25. RELATIONSHIP TO OTHER LAWS.

Section 311(r) is amended by adding at the end thereof the following: "Discharges from a deepwater port or from a vessel within a deepwater port safety zone which are subject to section 18 of the Deepwater Port Act of 1974 (33 U.S.C. 1517) shall not be subject to the liability and penalty provisions of this section.".

Page 70, after line 4, insert the following:

SEC. 25. MARINE SANITATION DEVICES.

Section 312(f)(1) of the Federal Water Pollution Control Act is amended by striking out "After" and inserting in lieu thereof "(A) Except as provided in subparagraph (B), after" and by adding at the end thereof the following:

"(B) A State may adopt or enforce a statute or regulation with respect to the design, manufacture, or installation or use of any marine sanitation device on a houseboat, if such statute or regulation is more stringent than the standards and regulations promulgated under this section. For purposes of this paragraph, the term 'houseboat' means a vessel which, for a period of time determined by the State in which the vessel is located, is used primarily as a residence and is not used primarily as a means of transportation.".

Page 78, line 19, strike out "guidelines" and insert in lieu thereof "regulations".

Page 78, line 23, after "(F)" insert the following: "(except for any pollutant for which a modification is authorized under section 301(g) of this Act)".

Page 79, line 9, strike out "(E)" and insert in lieu thereof "(F)".

Page 79, line 19, strike out all that follows the semicolon.

Page 79, after line 19, insert the following:

"(E) in the case of any permit issued for a fixed term exceeding 5 years, can be modified to ensure compliance with—

"(i) any new or revised effluent limitation under section 301, 302, or 304 of this Act,

"(ii) any new or revised pretreatment standard under section 307(b) of this Act,

"(iii) any new or revised guideline under section 403 of this Act, or

"(iv) any new or revised regulation governing the disposal of sewage sludge under section 405 of this Act,

which limitation, standard, guideline, or regulation is more stringent than the existing effluent limitation, pretreatment standard, guideline, or regulation in the permit or which controls a pollutant not controlled in the permit; and".

Page 79, strike out lines 20 through 23 and insert in lieu thereof the following:

(b) EXEMPTION FROM PERMIT OF CERTAIN STORMWATER RUNOFF.—

(1) IN GENERAL.—Section 402(1) is amended by inserting "(1)" after "(1)" and by adding at the end thereof the following:

Page 80, line 14, strike out the quotation marks and the final period.

Page 80, after line 14, insert the following:

"(3)(A) The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require such a permit, for discharges composed entirely of stormwater runoff unless the Administrator determines, in the case of a class or category of such discharges, that such class or category may be a significant contributor of pollutants to the navigable waters or, in the case of a particular discharge, that such discharge violates a water quality standard or is a significant contributor of pollutants to the navigable waters.

"(B) This paragraph shall not apply to discharges referred to in paragraph (2) of this subsection, agricultural stormwater discharges, or to discharges from municipal separate storm sewers.

"(C) Not later than one year after the date of the enactment of this paragraph, the Administrator shall promulgate interim final regulations identifying the classes and categories of industrial discharges for which permits are required in accordance with subparagraph (A). As soon as possible, but not later than six months, after completion of the study required by section 26(b)(2) of the Water Quality Renewal Act of 1985 (relating to NPDES permits), the Administrator shall issue such final regulations as necessary to take into account the results of such study.

"(D) Nothing is this paragraph shall affect any permit for a stormwater discharge in effect on the date of the enactment of this paragraph.

"(E) This paragraph shall apply during the period beginning on the date of the enactment of this paragraph and ending on December 31, 1989.".

(2) STUDY.—The Administrator shall study methods of regulating stormwater discharges. Such study shall include, but need not be limited to—

(A) an identification of the classes and categories of dischargers which have not been required to obtain permits under section 402(1)(3) of the Federal Water Pollution Control Act;

(B) a determination of the nature and extent of pollutants in the discharge of such dischargers; and

(C) a determination of procedures and methods to control such pollutants.

Not later than December 31, 1987, the Administrator shall submit to Congress a report on the results of such study along with recommendations on the most effective methods of regulating stormwater discharges.

Page 80, line 3, after "operations" insert the following: or transmission facilities.

Page 83, after line 25, insert the following:

(f) LOG TRANSFER FACILITIES.—Section 402 is amended by adding at the end thereof the following new subsection:

"(o) LOG TRANSFER FACILITIES.—

"(1) GENERAL RULE.—A log transfer facility which is required (but for this subsection) to have a permit under both this section and section 404 and with respect to which a permit under section 404 has been issued shall not be required to submit a new application for a permit under section 402.

"(2) DETERMINATION OF COMPLIANCE WITH 402 REQUIREMENTS.—The Administrator shall determine, after notice and an opportunity for a public hearing, whether a permit under section 404 with respect to a log transfer facility satisfies the applicable requirements of sections 301, 302, 306, 307, 308, and 403 of this Act. If the Administrator determines that the terms of such permit satisfy such requirements, a separate application for a permit under this section shall not be required. If the Administrator determines that such terms fail to satisfy such requirements, the Administrator may propose to the Secretary of the Army modifications to such permit to incorporate such requirements. If such permit is not modified or issued to incorporate such requirements, the Administrator shall require issuance of a permit under this section for such facility.

"(3) Definition.—For purposes of this subsection, the term 'log transfer facility' means a facility which is constructed, in whole or part, in waters of the United States and which is utilized for the purpose of transferring commercially harvested logs to or from a vessel or log raft.".

Page 83, after line 25, insert the following:

(f) Anti-Backsliding.—

(1) In general.—Section 402 is amended by adding at the end thereof the following new subsection:

"(p) Anti-Backsliding.—

"(1) General prohibition for BPJ and water quality based permits.—Except as provided in paragraph (2)—

"(A) a permit issued under subsection (a)(1)(B) of this section which contains an effluent limitation applicable to a pollutant, and

"(B) a permit issued under this section which contains an effluent limitation applicable to a pollutant and established on the basis of section 301(b)(1)(C) or 303(d),

may not be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to such pollutant.

"(2) Exception.—A permit described in paragraph (1) may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant if—

"(A) material and substantial alterations or additions to the permitted facility or activity occurred after permit issuance which justify the application of a less stringent effluent limitation;

"(B) information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent application at the time of permit issuance;

"(C) good cause exists for a less stringent effluent limitation, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy;

"(D) the permittee has filed a request for a variance under section 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a);

"(E) the permittee demonstrates that operation and maintenance costs of the permitted facility are totally disproportionate to the operation and maintenance costs considered in the development of effluent limitations promulgated after the issuance of the permit;

"(F) the Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under subsection (a)(1)(B); or

"(G) the permittee has installed the equipment and facilities required to meet such effluent limitation and has properly operated and maintained such equipment and facilities and has not been able to achieve the effluent limitation.

"(3) Limitations.—In no event may a permit described in paragraph (1) be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may a permit described in paragraph (1)(B) to discharge into waters be renewed, reissued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under section 303 applicable to such waters.

"(4) Effective period.—This subsection shall be in effect during the period of two years and six months beginning on the date of the enactment of this subsection.".

(2) Report.—The Administrator shall study the extent to which States have reviewed, revised, and adopted water quality standards in accordance with section 24 of the Municipal Wastewater Treatment Construction Grant Amendments of 1981 and the extent to which modifications of permits issued under section 402(a)(1)(B) of the Federal Water Pollution Control Act to permit less stringent effluent limitations should be allowed. The Administrator shall submit a report of such study, together with recommendations to Congress not later than two years after the date of the enactment of this Act.

(3) Conforming amendment.—Section 402(a)(1) is amended by inserting "(A)" after "either" and by inserting "(B)" after "this Act, or".

Page 84, after line 22, insert the following:

SEC. 30. CITIZEN SUITS.

Section 505(c) is amended by adding at the end thereof the following new paragraph:

"(3) Whenever any action is brought under this section in a court of the United States, the plaintiff shall serve a copy of the complaint on the Attorney General and the Administrator. No consent judgment shall be entered in an action in which the United States is not a party prior to forty-five days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator. No judgment in any action to which the United States is not a party shall have any binding effect upon the United States.".

Page 86, after line 25, insert the following:

SEC. 31. INDIAN TRIBES.

Title V is amended by redesignating section 518, and any references thereto, as section 519 and by inserting after section 517 the following:

"SEC. 518. INDIAN TRIBES.

"(a) Assessment of Sewage Treatment Needs; Report.—The Administrator, in cooperation with the Director of the Indian Health Service, shall assess the need for sewage treatment works to serve Indian tribes, the degree to which such needs will be met through funds allotted to States under section 205 of this Act and priority lists under section 216 of this Act, and any obstacles which prevent such needs from being met. Not later than one year after the date of the enactment of this section, the Administrator shall submit a report to Congress on the assessment under this subsection, along with recommendations specifying (1) how the Administrator intends to provide assistance to Indian tribes to develop waste treatment management plans and to construct treatment works under this Act, and (2) methods by which the participation in and administration of programs under this Act by Indian tribes can be maximized.

"(b) Reservation of Funds.—The Administrator shall reserve each fiscal year beginning after September 30, 1986, before allotments to the States under section 205(e), such amount as the Administrator determines appropriate based on the determination of unmet needs reported under subsection (a), but not less than one-half of one percent of the sums appropriated under section 207. Sums reserved under this subsection shall be available only for grants for the development of waste treatment management plans and for the construction of sewage treatment works to serve Indian tribes.

"(c) Cooperative Agreements.—In order to ensure the consistent implementation of the requirements of this Act, an Indian Tribe and the State or States in which the lands of such tribe are located may enter into a cooperative agreement, subject to the review and approval of the Administrator, to jointly plan and administer the requirements of this Act.

"(d) Treatement as States.—The Administrator is authorized to treat an Indian tribe as a State for purposes of title II and sections 104, 106, 303, 305, 308, 309, 314, 319, 402, and 404 of this Act to the degree necessary to carry out the objectives of this section, but only if—

"(1) the Indian tribe has a governing body carrying out substantial governmental duties and powers;

"(2) the functions to be exercised by the Indian tribe pertain to the management and protection of water resources which are held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation; and

"(3) the Indian tribe is reasonably expected to be capable, in the Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this Act and of all applicable regulations.

Such treatment as a State may include the direct provision of funds reserved under subsection (b) to the governing bodies of Indian tribes, and the determination of priorities by Indian tribes, where not determined by the Administrator in cooperation with the Director of the Indian Health Service. The Administrator, in cooperation with the Director of the Indian Health Service, is authorized to make grants under title II of this Act in an amount not to exceed 100 percent of the cost of a project. Not later than 18 months after the date of the enactment of this section, the Adminstrator shall, in consultation with Indian tribes, promulgate final regulations which specify how Indian tribes shall be treated as States for purposes of this Act.

The Administrator shall, in promulgating such regulations, provide a mechanism for the resolution of any unreasonable consequences that may arise as a result of differing water quality standards that may be set by States and Indian Tribes (located on common bodies of water). Such mechanism should provide for the avoidance of such unreasonable consequences in a manner consistent with the objective of the Act.

"(e) Grants for Nonpoint Source Programs.—The Administrator shall make grants to an Indian tribe under section 319 of this Act as though such tribe were a State. Not more than one-third of one percent of the amount appropriated for any fiscal year under section 319 may be used to make grants under this subsection. In addition to the requirements of section 319, an Indian tribe shall be required to meet the requirements of paragraphs (1), (2), and (3) of subsection (d) of this section in order to receive such a grant.

"(f) Definitions.—For purposes of this section, the term—

"(1) 'Federal Indian reservation' means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; and

"(2) 'Indian tribe' means any Indian tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.".

Page 86, after line 25, insert the following:

SEC. 32. DEFINITION OF POINT SOURCE.

For purposes of the Federal Water Pollution Control Act, the term "point source" includes a leachate collection system, other than a leachate collection system used for agricultural purposes.

Page 86 after line 25, insert the following:

SEC. 33. CHESAPEAKE AND NARRAGANSETT BAYS.

(a) Chesapeake Bay Program.—

(1) Office.—The Administrator shall continue the Chesapeake Bay program and shall establish and maintain in the Environmental Protection Agency an office, division, or branch of Chesapeake Bay Programs to—

(A) collect and make available, through publications and other appropriate means, information pertaining to the environmental quality of the Chesapeake Bay (hereinafter in this subsection referred to as the "Bay");

(B) coordinate Federal and State efforts to improve the water quality of the Bay;

(C) determine the impact of sediment deposition in the Bay and identify the sources, rates, routes, and distribution patterns of such sediment deposition; and

(D) determine the impact of natural and man-induced environmental changes on the living resources of the Bay and the relationships among such changes, with particular emphasis placed on the impact of pollutant loadings of nutrients, chlorine, acid precipitation, dissolved oxygen, and toxic pollutants, including organic chemicals and heavy metals, and with special attention given to the impact of such changes on striped bass.

(2) Interstate development plan grants.—The Administrator shall, at the request of the Governor of a State affected by the interstate management plan developed pursuant to the Chesapeake Bay program (hereinafter in this subsection referred to as the "plan"), make a grant for the purpose of implementing the management mechanisms contained in the plan if such State has, within one year after the date of the enactment of this section, approved and committed to implement all or substantially all aspects of the plan. Such grants shall be made subject to such terms and conditions as the Administrator considers appropriate.

(3) Submission of proposal.—A state or combination of States may elect to avail itself of the benefits of paragraph (2) by submitting to the Administrator a proposal including the estimated cost of the abatement actions proposed to be taken during the next fiscal year. If the Administrator finds that such proposal is consistent with

the national policies set forth in section 101(a) of the Federal Water Pollution Control Act and will contribute to the achievement of the national goals set forth in such section, he shall approve such proposal and shall finance the costs of implementing segments of such proposal.

(4) Federal share.—Grants under paragraph (2) shall not exceed 50 percent of the costs of implementing the proposed plan in any fiscal year and shall be made on condition that non-federal sources provide the remainder of the cost of implementing the proposed during such fiscal year.

(5) Administrative costs.—Administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against programs or projects supported by funds made available under paragraph (2) shall not exceed in any one fiscal year 10 percent of the annual grant made to a State under such paragraph.

(6) Reports.—Any State or combination of States that receives a grant under paragraph (2) shall, within 18 months after the date of receipt of such grant and biennially thereafter, report to the Administrator on the progress made in implementing the interstate management plan developed pursuant to the Chesapeake Bay program. The Administrator shall transmit each such report along with the comments of the Administrator on such report to Congress.

(b) Narragansett Bay Progam.—

(1) Grants.—The Administrator shall, at the request of the Governor of an affected State and after consultation with the Administrator of the National Oceanic and Atmospheric Administration and other appropriate Federal and State agencies and interested persons, make a grant for purposes of assessing the principal factors having an adverse effect on the environmental quality of the Narragansett Bay (hereinafter in this subsection referred to as the "Bay"), as perceived by both scientists and users, in conjunction with developing and implementing a management program to improve the Bay's water quality. Payments for such purposes may be made to the States as hereinafter provided, subject to such terms and conditions as the Administrator considers appropriate.

(2) Federal share.—Grants under this paragraph shall not exceed 50 percent of the costs of implementing the plan in any fiscal year and shall be made on condition that non-Federal sources provide the remainder of the cost of implementing the plan during such fiscal year.

(3) Approval of applications.—A State may elect to avail itself of the benefits of this subsection by submitting to the Administrator a full and complete description of the program it proposes to establish and administer under State law. The Administrator shall approve each such submitted program, within three months of receipt of such program, if the applicant demonstrates to the satisfaction of the Administrator that the applicant will—

(A) establish a committee of representatives from various units of Federal, State, and local governments, research and educational institutions, and groups and individuals concerned with problems of water quality in the Bay to provide advice on the design and implementation of a management program and to coordinate communication on issues affecting the Bay's water quality;

(B) review and coordinate Federal and State water pollution abatement efforts that will most efficiently address those principal factors having an adverse effect on the Bay's water quality;

(C) undertake, subsequent to an analysis of all environmental sampling data presently being collected on the Bay, methods for improving such data collection, particularly with respect to toxic pollutants;

(D) establish a continuing capacity for collecting, storing, analyzing, and disseminating such data;

(E) institute a sampling program where deficiencies are found to exist in present sampling programs; and

(F) develop and, as soon as practicable but not later than three years after the date of the enactment of this section, implement management practices and measures (including land use requirements) to reduce to the greatest extent feasible pollutant loadings in the Bay and to improve the Bay's water quality.

(4) State reports.—Any State that avails itself of the benefits of this subsection shall, not later than two years after receipt of a Federal grant under this subsection and annually thereafter, report to the Administrator on progress made in implementing a management program to improve the water quality of the Bay.

(c) Authorization of Appropriations.—There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purposes of this section:

(1) $3,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989 to carry out subsection (a)(1);

(2) $10,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989, for grants to States under subsection (a)(2); and

(3) $1,500,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989, to carry out subsection (b).

Page 86, after line 25, insert the following:

SEC. 34. NEW YORK AND NEW JERSEY HARBOR AREA.

(a) Clearinghouse, Coordination, and Study Functions.—The Administrator shall—

(1) collect and make available, through publications and other appropriate means, information pertaining to the environmental quality of the New York and New Jersey Harbor area (hereinafter in this subsection referred to as the "Harbor");

(2) coordinate Federal and State efforts to improve the water quality of the Harbor; and

(3) determine the impact of natural and man-induced environmental changes on the living resources of the Harbor and on adjacent coastal areas and the relationships among such changes, with particular emphasis placed on the impact of pollutant loadings of sewage, dissolved oxygen, and toxic pollutants, including organic chemicals and heavy metals.

(b) Grants for Implementation of Interstate Management Plan.—The Administrator shall, at the request of the Governor of a State affected by any interstate management plan relating to the Harbor developed pursuant to section 33 of this Act (hereinafter in this subsection referred to as the "plan"), make a grant for the purpose of implementing the management mechanisms contained in the plan in accordance with such section.

(c) Submission of Proposal.—An affected State or combination of States may, in addition, submit to the Administrator a proposal including the estimated cost of the abatement actions proposed to be taken during the next fiscal year. If the Administrator finds that such proposal is consistent with the national policies set forth in section 101(a) of the Federal Water Pollution Control Act and will contribute to the achievement of the national goals set forth in such section, he shall approve such proposal and shall finance the costs of implementing segments of such proposal.

(d) Federal Share of Grants.—Grants under this section shall not exceed 50 percent of the costs of implementing the proposal in any fiscal year and shall be made on condition that non-Federal sources provide the remainder of the cost of implementing the proposal during such fiscal year.

(e) Administrative Costs.—Administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against programs or projects supported by funds made available under this section shall not exceed in any one fiscal year 10 percent of the annual grant made to a State under this section.

(f) Reports.—Any State or combination of States that receives a grant under section 36 (relating to maintenance of water quality in estuaries) or this section shall, within 18 months after the date of receipt of such grant and biennially thereafter report to the Administrator on the progress made in implementing the plan developed pursuant to such section 36 or this section. The Administrator shall transmit each such report along with the comments of the Administrator on such report to Congress.

(g) Authorization of Appropriations.—There is authorized to be appropriated $10,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989, to carry out this section.

Page 86, after line 25, insert the following:

SEC. 35. SAN FRANCISCO BAY.

(a) Initiation of Program.—The Administrator shall initiate a San Francisco Bay program to—

(1) collect and make available, through publications and other appropriate means, information pertaining to the environmental quality of the San Francisco Bay (hereinafter in this section referred to as the "Bay");

(2) coordinate Federal, State and local efforts to improve the water quality of the Bay;

(3) establish a committee of representatives from various units of Federal, State, and local governments, research and education institutions, and groups and individuals concerned with problems of water quality in the Bay to provide advice on the development and implementation of such management program and to coordinate communication on issues affecting the Bay's water quality;

(4) determine the impact of natural and man-induced environmental changes on the living resources of the Bay and the relationships among such changes, with particular emphasis placed on the impact of pollutant loadings and toxic pollutants, including organic chemicals and heavy metals, and with special attention given to the impact of such changes on water quality and natural resources such as striped bass.

(5) develop a management plan that shall contain management practices and measures to reduce to the greatest extent feasible pollutant loadings in the Bay and to improve the Bay's water quality.

(b) Grants.—The Administrator shall, make a grant to the State of California for the purpose of implementing the management mechanisms contained in the management plan developed under subsection (a)(5), if such State has, within one year after the date of the enactment of this section, approved and committed to implement all or substantially all aspects of the plan. Such grants shall be made subject to such terms and conditions as the Administrator considers appropriate.

(c) Submission of Proposal.—The State of California may elect to avail itself of the benefits of this section by submitting to the Administrator a proposed plan including the estimated cost of the abatement actions proposed to be taken during the next fiscal year. If the Administrator finds that such proposal is consistent with the national policies set forth in section 101(a) of the Federal Water Pollution Control Act and will contribute to the achievement of the national goals set forth in such section, he shall approve such proposal and shall finance the costs of implementing segments of such proposal; except that Federal grants under this section shall not exceed 50 percent of the cost of implementing the proposed plan in any fiscal year and shall be made on condition that non-Federal sources provide the reminder of the cost of implementing the plan during such fiscal year.

(d) Administrative Costs.—Administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against programs or projects supported by funds made available under this section shall not exceed in any one fiscal year 10 percent of the annual Federal grant made under this section.

(e) Reports.—The State of California shall, within 18 months after the date of receipt of such grant and biennially thereafter, report to the Administrator on the progress made in implementing the interstate management plan developed pursuant to the San Francisco Bay program. The Administrator shall transmit each such report along with the comments of the Administrator on such report to Congress.

(f) Authorization of Appropriations.—There is authorized to be appropriated to carry out this section, to remain available until expended, $3,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989.

Page 86, after line 25, insert the following:

SEC. 36. MAINTENANCE OF WATER QUALITY IN ESTUARIES.

(a) Management Conference.—

(1) In general.—In any case where the Administrator determines, on his own initiative or upon request of one or more States any portion of which is located within the estuarine zone of an estuary, that the attainment or maintenance of that water quality in such estuary which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and

allows recreational activities, in and on the water, requires the control of point and nonpoint sources of pollution in more than one State, the Administrator shall convene a management conference. The Administrator shall give priority consideration under this section to Long Island Sound; Buzzards Bay, Massachusetts; Delaware Bay, Delaware and New Jersey; and Albemarle Sound, North Carolina.

(2) Boundary dispute exception.—In any case in which a boundary between two States passes through an estuary and such boundary is disputed and is the subject of an action in any court, the Administrator shall not convene a management conference with respect to such estuary before a final adjudication has been made of such dispute.

(3) Existing management program exception.—Notwithstanding any other provision of this section, the Administrator shall not convene a management conference with respect to an estuary if he determines that there exists a management program for the estuarine zone of such estuary with sufficient authority to achieve the purposes of this section.

(b) Members of Conference; Lead Agency.—The members of a conference under this section shall include the Administrator, the Administrator of the National Oceanic and Atmospheric Administration, a representative of each of those States which are located, in whole or in part, within the estuarine zone of the estuary for which the conference is convened, a representative of each interested Federal agency as determined appropriate by the Administrator, a representative of any interstate agency having jurisdiction over all or a significant part of the estuary, and representatives of local governments within the estuarine zone as deemed appropriate by the Administrator. In any case in which an interstate agency has jurisdiction over all or a significant part of the estuary, such agency shall be the lead agency for purposes of carrying out this section.

(c) Purposes of Conference.—The purposes of any management conference convened with respect to an estuary under this subsection shall be—

(1) to develop a comprehensive master plan for such estuary;

(2) to coordinate the implementation of the master plan by the States participating in the conference;

(3) to recommend priority corrective actions and compliance schedules to address point and nonpoint sources of pollution posing the most serious problems; and

(4) to monitor the estuary to determine the effectiveness of actions taken pursuant to the master plan.

(d) Master Plan.—

(1) Contents.—The master plan developed pursuant to paragraph (1) of subsection (c) may include, but need not be limited to any of the following standards and practices which are necessary for the attainment or maintenance of the water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water:

(A) development of water quality standards for waters within the estuarine zone;

(B) development of toxicity-based standards for toxic pollutants;

(c) development of water quality based effluent standards for significant point sources of pollution; and

(D) development of best management practices to control nonpoint sources of pollution.

(2) Utilization of Existing Data.—In developing a master plan under this section, the management conference shall survey and utilize existing reports, data, and studies relating to the estuary that have been developed by or made available to Federal, interstate, State, or local agencies.

(e) Period of Conference.—A management conference convened under this section shall be convened for at least five years. Such conference may be extended by the Administrator, and if terminated after the initial five-year period, may be reconvened by the Administrator at any time thereafter, as may be necessary to meet the requirements of this section.

(f) Grants for Implementation of Master Plan.—The Administrator is authorized to make grants to States and interstate agencies participating in a management conference which has adopted a comprehensive master plan pursuant to this section for the estuary which is the subject of such conference. The amount of the grants to any State or interstate agency for a fiscal year shall, subject to such amounts as are provided in appropriation Acts, be equal to 50 percent of that State's or agency's cost of implementing the master plan for such fiscal year.

(g) Definitions.—For purposes of this section, the terms "estuary" and "estuarine zone" have the meanings such terms have in section 104(n)(4) of the Federal Water Pollution Control Act, except that the term "estuarine zone" shall also include those portions of tributaries draining into the estuary up to the historic height of migration of anadromous fish or the historic head of tidal influence, whichever is higher. For purposes of this section, the term "State" has the meaning such term has in section 502(3) of such Act.

(h) Authorization of Appropriations.—

(1) Grants.—There is authorized to be appropriated to carry out this section not to exceed $13,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990. Amounts appropriated under this paragraph shall remain available until expended.

(2) Other expenses.—There is authorized to be appropriated to the Administrator not to exceed $2,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, for—

(A) expenses related to the administration of management conferences under this section;

(B) grants to State water pollution control agencies, State coastal zone management agencies, interstate agencies, other public or nonprofit private agencies, institutions, organizations, and individuals for research, surveys, studies, and modeling and other technical work necessary for the development of a comprehensive master plan under this section; and

(C) monitoring the implementation of a comprehensive master plan by the management conference or by the Administrator in any case in which the conference has been terminated.

Page 86, after line 25, insert the following:

SEC. 37. RESEARCH ON EFFECTS OF POLLUTANTS.

(a) Matters Included.—In carrying out the provisions of section 104(a) of the Federal Water Pollution Control Act, the Administrator shall conduct research on the harmful effects on the health and welfare of persons caused by pollutants in water, in conjuction with the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and other Federal, State, and interstate agencies carrying on such research. Such research shall include, and shall place special emphasis on, the effect that bioacumulation of these pollutants in aquatic species has upon reducing the value of aquatic commercial and sport industries. Such research shall further study methods to reduce and remove these pollutants from the relevant affected aquatic species so as to restore and enhance these valuable resources.

(b) Authorizaton of Appropriations.—There is authorized to be appropriated to carry out subsection (a) of this section not to exceed $2,500,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989.

Page 86, after line 25, insert the folowing:

SEC. 38. SEWAGE SLUDGE.

(a) Identification of Toxic Pollutants.—

(1) Six months.—Not later than six months after the date of the enactment of this Act, the Aministrator shall identify those toxic pollutants which, on the basis of available information on their toxicity, persistence, concentraton, mobility, or potential for exposure, may be present in sewage sludge in concentrations which may adversely affect human health or the environment.

(2) Eighteen months.—Not later than 18 months after the date of the enactment of this Act, the Administrator shall identify those toxic polutants not identified under paragraph (1) which may be present in sewage sludge in concentrations which may adversely affect public health or the environment.

(b) Regulations.—

(1) For six-month pollutants.—Not later than 18 months after the date of the enactment of this Act, the Administrator shall publish regulations specifying acceptable management practices for sewage sludge containing each toxic pollutant identified under subsection (a)(1) and establishing numerical limitations for each such pollutant for each use of or disposal technique for sludge identified by the Administrator. Such regulations shall require compliance no later than six months after their publication.

(2) For eighteen-month pollutants.—Not later than 30 months after the date of the enactment of this Act, the Administrator shall publish regulations specifying acceptable management practices for sewage sludge containing each toxic pollutant identified under subsection (a)(2) and establishing numerical limitations for each such pollutant for each use of or disposal technique for sludge identified by the Administrator. Such management practices and numerical limitations shall be adequate to protect the public health and the environment from any reasonably anticipated adverse effects of such pollutant. Such regulations shall require compliance no later than six months after their publication.

(3) Alternative standards.—For purposes of this subsection, if, in the judgment of the Administrator, it is not feasible to prescribe or enforce a numerical limitation for a pollutant identified under subsection (a), he may instead promulgate a design, equipment, management practice, or operational standard, or combination thereof, which in his judgment is adequate to protect public health and the environment from any reasonably anticipated adverse effects of such pollutant. In the event the Administrator promulgates a design or equipment standard under this subsection, he shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment.

(4) Treatment of regulations.—Any regulation issued under this subsection shall be considered an "effluent standard or limitation" for purposes of section 308 or section 505 of the Federal Water Pollution Control Act.

(c) Studies and Projects.—The Administrator is authorized to conduct or initiate scientific studies, demonstration projects, and public information and education projects which are designed to promote the safe and beneficial use of sewage sludge for such purposes as aiding the restoration of abandoned mine sites, conditioning soil for parks and recreation areas, agricultural and horticultural uses, and other beneficial purposes. For the purposes of carrying out this subsection, the Administrator may make grants to State water pollution control agencies, other public or nonprofit agencies, institutions, organizations, and individuals. In cooperation with other Federal departments and agencies, other public and private agencies, institutions, and organizations, the Administrator is authorized to collect and disseminate information pertaining to the safe and peneficial use of sewage sludge.

(d) Authorization of Appropriations.—For the purposes of carrying out the scientific studies, demonstration projects, and public information and education projects authorized in this section, there is authorized to be appropriated for fiscal years beginning after September 30, 1985, not to exceed $15,000,000.

Page 86, after line 25, insert the following:

SEC. 39. PUGET SOUND.

(a) Master Plan; Priority List; Monitoring Program.—The Administrator, in consultation with the Administrator of the National Oceanic and Atmospheric Administration, a representative of any other interested Federal agency as determined appropriate by the Administrator, representatives of the State of Washington, and representatives of interested local governments as determined appropriate by the Administrator, shall—

(1) develop a comprehensive master plan for Puget Sound, Washington;

(2) recommend priority corrective actions and compliance schedules to address point and nonpoint sources of pollution posing the most serious problems to the water quality of such Sound; and

(3) monitor such sound to determine the effectiveness of actions taken pursuant to the master plan.

(b) Contents of Master Plan.—The master plan developed pursuant to paragraph (1) of subsection (a) may include, but need not be limited to, any of the following standards and practices which are necessary for the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife and allows recreational activities in and on the water:

(1) development of water quality standards for waters within the estuarine zone of Puget Sound;

(2) development of toxicity-based standards for toxic pollutants;

(3) development of water quality based effluent standards for significant point sources of pollution; and

(4) development of best management practices to control nonpoint sources of pollution.

(c) Use of Existing Data.—In developing a master plan under this section, the Administrator shall survey and utilize existing reports, data, and studies relating to Puget Sound that have been developed by or made available to Federal, State, or local agencies.

(d) Grants.—The Administrator is authorized to make grants to the State of Washington if such State adopts a comprehensive master plan pursuant to this section for the Puget Sound. The amount of such grant for a fiscal year, shall, subject to such amounts as are provided in appropriation Acts, be equal to 50 percent of such State's cost of implementing the master plan for such fiscal year.

(e) Authorization of Appropriations.—There is authorized to be appropriated to the Administrator to carry out this section not to exceed $4,900,000 for the fiscal year ending September 30, 1986, $4,450,000 for the fiscal year ending September 30, 1987, and $2,400,000 for the fiscal year ending September 30, 1988. Amounts appropriated under this subsection shall remain available until expended.

Page 86, after line 25, insert the following section:

SEC. 41. OCEAN DISCHARGE RESEARCH PROJECTS.

(a) In General.—Notwithstanding any other provision of law, the Administrator is authorized to issue a research permit to the Orange County, California, Sanitation Districts for the discharge of preconditioned municipal sewage sludge into the ocean for the purpose of enabling research to be conducted in assessing and analyzing the effects of disposing of sewage sludge by pipeline into ocean waters, if the Administrator is satisfied that such local governmental agency is actively pursuing long-term land-based options for the handling of its sludge with special emphasis on remote disposal alternatives set forth in the 1980 LA/OMA sludge management project and on reuse of sludge or use of recycled sludge and if the Administrator determines there is no likelihood of an unacceptable adverse effect on the environment as a result of issuance of such permit.

(b) Permit Terms.—

(1) Period.—Such permit for the discharge of sludge shall be for a period of five years.

(2) Monitoring.—Such permit shall provide for monitoring of permitted discharges and other discharges into the ocean in the same area and the effects of such discharges (including cumulative effects) in conformance with requirements established by the Administrator, after consultation with appropriate Federal and State agencies, and for the reporting of such monitoring to Congress and the Administrator every six months.

(3) Volume of discharge.—Such permit shall provide that the volume of such local agency's sludge disposed of by such experimental pipeline shall be no more than one and one half times that being disposed of by such remote disposal and alternatives for the reuse of sludge and the use of recycled sludge. In no event shall the agency dispose of more than 50 percent of its sludge by the pipeline.

(4) Termination.—The permit shall provide for termination of the permit if the Administrator determines that the disposal of sewage sludge is resulting in an unacceptable adverse impact on fish, shellfish, and wildlife.

(c) Report.—Such districts shall report the results of the program and an analysis of such program to Congress under this section not later than four and one-half years after issuance of the permit.

Page 86, after line 25, insert the following:

SEC. 42. GRANTS FOR REPLACEMENT OF CONTAMINATED GROUNDWATER.

(a) Grant Recipients.—The Administrator is authorized to make grants to—

(1) any person who owns or operates a public water system which, because of groundwater contamination, is unable to supply water which is fit for human consumption to some or all of the users of such system, and

(2) any unit of local government on behalf of individuals residing within the boundaries of such unit whose water is supplied from a source other than a public water system and is unfit for human consumption because of groundwater contamination.

(b) Grant Purpose.—Grants under this section shall be for the purpose of providing alternative water supplies to such users and individuals on a temporary basis and providing permanent remedies for water supply problems resulting from groundwater contamination, including but not limited to the drilling of new wells and the installation of new pipes.

(c) Application.—An application for a grant under this section shall be in such form and shall contain such information as the Administrator may require. Each such application shall include—

(1) a description of the source and extent of groundwater contamination;

(2) information on the number of people who do not have water available to them because of such contamination; and

(3) a description of the measures the applicant proposes to undertake with the assistance to be provided under this section.

(d) Federal Share.—The Federal share of the cost of measures undertaken with assistance under this section shall not exceed 60 percent.

(e) Limitations on Amount.—The maximum amount of a grant under this section to any applicant with respect to a particular source of groundwater contamination shall be $2,000,000 for each fiscal year. The maximum amount of grants under this section to applicants within one State shall be $10,000,000 for each fiscal year.

(f) Annual Reports.—The Administrator shall report annually to Congress on grants made under this section. Each such report shall include—

(1) information on applicants for such grants, including the number of such applicants;

(2) information on the sources and extent of groundwater contamination with respect to which applications are made under this

section, including the average number of people affected by each source of groundwater contamination; and

(3) the average amount of such grants and the types of measures undertaken with such grants.

(g) DEFINITIONS.—For purposes of this section—

(1) the term "person" includes a State, a political subdivision of a State, and an agency or instrumentality of a State or political subdivision of a State;

(2) the term "public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves at least 25 individuals; and

(3) the term "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Island, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Marianas.

(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section not to exceed $150,000,000 per fiscal year for each of the fiscal years 1986, 1987, and 1988.

Page 86, after line 25 insert the following:

SEC. 43. UNCONSOLIDATED QUARTERNARY AQUIFER.

Notwithstanding any other provision of law, no person may—

(1) locate or authorize the location of a landfill, surface impoundment, waste pile, injection well, or land treatment facility over the Unconsolidated Quarternary Aquifer, or the recharge zone or streamflow source zone of such aquifer, in the Rockaway River Basin, New Jersey (as such aquifer and zones are described in the Federal Register, January 24, 1984, pages 2946-2948)/ or

(2) place or authorize the placement of solid waste in a landfill, surface impoundment, waste pile, injection well, or land treatment facility over such aquifer or zone.

This section may be enforced under sections 309(a) and (b) of the Federal Water Pollution Control Act. For purposes of section 309(c) of such Act, a violation of this section shall be considered a violation of section 301 of the Federal Water Pollution Control Act.

Page 86, after line 25, insert the following:

SEC. 44. GRANTS FOR PROTECTING GROUNDWATER QUALITY.

(a) ELIGIBLE APPLICANTS AND ACTIVITIES.—Upon application of a State for which a report submitted under subsection (a) of section 319 of the Federal Water Pollution Control Act, as added by section 7 of this Act, and a plan submitted under subsection (b) of such section is approved under such section, the Administrator shall make grants under this section to such State for the purpose of assisting such State in carrying out ground-water quality protection activities which the Administrator determines will advance the State toward implementation of a comprehensive nonpoint source pollution control program. Such activities shall include, but not be limited to, research, planning, ground-water assessments, demonstration programs, enforcement, technical assistance, education and training to protect the quality of ground water and to prevent contamination of ground water from nonpoint sources of pollution.

(b) APPLICATIONS.—An application for a grant under this section shall be in such form and shall contain such information as the Administrator may require.

(c) FEDERAL SHARE; MAXIMUM AMOUNT.—The Federal share of the cost of assisting a State in carrying out groundwater protection activities in any fiscal year under this section shall be 50 percent of the costs incurred by the State in carrying out such activities, except that the maximum amount of Federal assistance which any State may receive under this section in any fiscal year shall not exceed $150,000.

(d) REPORT.—The Administrator shall include in each report transmitted under subsection (j) of section 319 of the Federal Water Pollution Control Act, as added by section 7 of this Act, a report on the activities and programs implemented under this section during the preceding fiscal year.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section not to exceed $7,500,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990.

Page 100, after line 16, insert the following:

SEC. 36. GREAT LAKES INTERNATIONAL COORDINATION OFFICE.

(a) FINDINGS AND PURPOSE.—

(1) FINDINGS.—The Congress finds that—

(A) the Great Lakes are a valuable national resource, continuously serving the people of the United States and other nations as an important source of food, fresh water, recreation, beauty, and enjoyment;

(B) the United States should seek to attain the goals embodied in the Great Lakes Water Quality Agreement of 1978 with particular emphasis on goals related to toxic pollutants; and

(C) the Environmental Protection Agency (hereinafter in this section referred to as the "Agency") should take the lead in the effort to meet those goals, working with other Federal agencies and State and local authorities.

(2) PURPOSE.—It is the purpose of this section to achieve the goals embodied in the Great Lakes Water Quality Agreement of 1978 through improved organization and definition of mission on the part of the Agency, funding of State grants for pollution control in the Great Lakes area, and improved accountability for implementation of such agreement.

(b) ESTABLISHMENT.—The Great Lakes National Program Office of the Agency is hereby designated as the Great Lakes International Coordination Office (hereinafter in this section referred to as the "Office"). The head of the Office shall also serve as principal liaison person on Great Lakes matters to the International Joint Commission, United States and Canada (hereinafter in this section referred to as the "Commission").

(c) FUNCTIONS.—The Office shall—

(1) develop and implement specific action plans to carry out the responsibility of the United States under the Great Lakes Water Quality Agreement of 1978;

(2) carry out toxic pollutant control demonstration projects at Saginaw Bay, Michigan; Sheboygan Harbor, Wisconsin; Grand Calumet River, Indiana; Ashtabula River, Ohio; and Buffalo River, New York; and at other sites in the Great Lakes at which the Commission determines that sediments are heavily contaminated with toxic materials;

(3) coordinate actions of the Agency (including actions by headquarters and regional offices thereof) aimed at improving Great

Lakes water quality;

(4) coordinate actions of the Agency with the actions of other Federal agencies and State and local authorities, so as to ensure the input of those agencies and authorities in developing water quality strategies and obtain the support of those agencies and authorities in achieving the objective of such agreement;

(5) establish a Great Lakes system-wide surveillance network to monitor the water quality of the Great Lakes, with specific emphasis on the monitoring of toxic pollutants; and

(6) serve as the liaison with, and provide information to, the Canadian members of the Commission and the Canadian counterpart to the Agency.

(d) ADMINISTRATOR'S RESPONSIBILITY.—The Administrator shall ensure that the Office should enter into agreements with the various organizational elements of the Agency involved in Great Lakes activities and the appropriate State agencies specifically delineating—

(1) the duties and responsibilities of each such element and the Agency with respect to the Great Lakes;

(2) the time periods for carrying out such duties and responsibilities; and

(3) the resources to be committed to such duties and responsibilities.

(e) BUDGET ITEM.—The Administrator shall, in the Agency's annual budget submission to Congress, include a funding request for the Office as a separate budget line item.

(f) REPORTS.—

(1) COMPREHENSIVE ASSESSMENT.—Within 120 days after the date of the enactment of this Act, and at the beginning of each fiscal year thereafter, the Administrator shall submit to Congress a comprehensive assessment of the planned efforts to be pursued in the succeeding fiscal year for implementing the Great Lakes Water Quality Agreement of 1978. The assessment shall show by categories (including judicial enforcement, research, State cooperative efforts, and general administration) the amounts anticipated to be expended on Great Lakes water quality initiatives in the fiscal year to which the assessment relates. The assessment shall also include a report of current programs administered by other Federal agencies which make available resources to Great Lakes water quality efforts.

(2) COMPREHENSIVE REPORT.—Within 150 days after the end of each fiscal year, the Administrator shall submit to Congress a comprehensive report which—

(A) describes the achievements in the preceding fiscal year in implementing such agreement and shows by categories (including judicial enforcement, research, State cooperative efforts, and general administration) the amounts expended on Great Lakes water quality initiatives in such preceding fiscal year;

(B) describes the progress made in such preceding fiscal year in implementing the system of surveillance of the water quality of the Great Lakes, with particular reference to toxic pollutants; and

(C) describes the long-term prospects for improving the water quality of the Great Lakes.

(g) AUTHORIZATIONS OF APPROPRIATIONS.—

(1) FOR THE OFFICE.—There are authorized to be appropriated for the purposes of carrying out subsections (b), (c), and (d) and for the purpose of carrying out the functions, powers, and duties of the Office not to exceed—

(A) $8,000,000 for fiscal year 1986, of which $1,500,000 shall be available only to carry out subsection (c)(2);

(B) $9,000,000 for fiscal year 1987, of which $2,500,000 shall be available only to carry out subsection (c)(2);

(C) $10,000,000 for fiscal year 1988, of which $3,500,000 shall be available only to carry out subsection (c)(2);

(D) $12,000,000 for fiscal year 1989, of which $5,000,000 shall be available only to carry out subsection (c)(2); and

(E) $13,000,000 for fiscal year 1990, of which $5,000,000 shall be available only to carry out subsection (c)(2).

(2) FOR GREAT LAKES STUDIES.—For the purpose of carrying out section 104(f) of the Federal Water Pollution Control Act there is authorized to be appropriated $10,000,000 for fiscal year 1986. Such funds shall be in addition to and not in lieu of any funds authorized to be appropriated under section 104(u) of such Act.

Page 105, after line 12, insert the following:

(e) NEVADA COUNTY, CALIFORNIA.—The Administrator is authorized to make a grant from funds allotted to the State of California for fiscal years beginning after September 30, 1985, for the construction of a collection system serving the Glenshire/Devonshire area of Nevada County, California, to deliver waste to the Tahoe-Truckee Sanitary District's regional wastewater treatment facility.

Page 105, after line 12, insert the following:

(e) TREATMENT WORKS FOR WANAQUE, NEW JERSEY.—The Administrator shall make grants to the Wanaque Valley Regional Sewerage Authority, New Jersey, from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of New Jersey, for fiscal years beginning after September 30, 1985, for the construction of treatment works with a total treatment capacity of 1,050,000 gallons per day (including a treatment module with a treatment capacity of 350,000 gallons per day). Notwithstanding section 202 of the Federal Water Pollution Control Act, the Federal share of the cost of construction of such treatment works shall be 75 percent.

Page 105, after line 12, insert the following:

(f) TREATMENT WORKS FOR LENA, ILLINOIS.—The Administrator shall make grants to the village of Lena, Illinois, from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of Illinois, for fiscal years beginning after September 30, 1985, for the construction of a replacement moving bed filter press for the treatment works of such village. Notwithstanding section 202 of the Federal Water Pollution Control Act, the Federal share of the cost of construction of such project shall be 75 percent.

Page 110, after line 2, insert the following:

SEC. 18. STUDIES OF WATER POLLUTION PROBLEMS IN AQUIFERS.

(a) STUDIES.—The Administrator, in conjunction with State and local agencies and after providing an opportunity for full public participation, shall conduct studies for the purpose of identifying existing and potential point and nonpoint sources of pollution, and of identifying measures and practices necessary to control such sources of pollution, in the following groundwater systems and aquifers:

(1) the groundwater system of the Upper Santa Cruz Basin and the Avra-Altar Basin of Pima, Pinal, and Santa Cruz Counties, Arizona;

(2) the Spokane-Rathdrum Valley Aquifer, Washington and Idaho;

(3) the Nassau and Suffolk Counties Aquifer, New York;

(4) the Whidbey Island Aquifer, Washington;

(5) the Unconsolidated Quaternary Aquifer, Rockaway River area, New Jersey; and

(6) the Sparta Aquifer, Arkansas.

(b) Proposed Management Plans.—After completion of each study under subsection (a), the Administrator, in conjunction with State and local agencies and after providing an opportunity for full public participation, shall prepare a proposed management plan decribing methods of implementing the measures and practices identified for each groundwater system and aquifer under subsection (a).

(c) Reports.—Not later than one year after the date of the enactment of this Act, the Administrator shall submit to Congress an interim report of the studies and proposed management plans under this section. Not later than two years after such date of enactment, the Administrator shall complete such studies and plans and submit to Congress a final report of such studies and plans.

(d) Authorization of Appropriations.—There is authorized to be appropriated $10,000,000 for fiscal years beginning after September 30, 1985, to carry out this section.

Page 110, after line 2, insert the following:

SEC. 49. GREAT LAKES CONSUMPTIVE USES STUDY.

(a) Study of Control Measures.—In recognition of the serious impacts that are expected to occur to the Great Lakes environment as a result of a projected fivefold increase in consumption of Great Lakes water, including loss of wetlands and reduction of fish spawning and habitat areas, as well as serious economic losses to vital Great Lakes industries, and in recognition of the national goal to provide environmental protection and preservation of our natural resources while allowing for continued economic growth, the Administrator, in cooperation with other interested departments, agencies, and instrumentalities of the United States and the eight Great Lakes States and their political subdivisions, is authorized to conduct a study of control measures which can be implemented to reduce the quantity of Great Lakes water consumed without adversely affecting projected economic growth of the Great Lakes region.

(b) Matters Included.—The study authorized by this section shall include an analysis of both existing and new technology which is likely to be feasible in the foreseeable future and shall at a minimum include the following:

(1) a review of the methodologies used to forecast Great Lakes consumptive uses, including an analysis of the sensitivity of key variables affecting such uses;

(2) an analysis of the effect that enforcement of provisions of the Federal Water Pollution Control Act relating to thermal discharges has had on consumption of Great Lakes water;

(3) an analysis of the effect of laws, regulations and national policy objectives on consumptive uses of Great Lakes water used in manufacturing;

(4) an analysis of the economic effects on a consuming industry and other Great Lakes interests associated with a particular consumptive use control strategy;

(5) an analysis of associated environmental impacts, both singularly and in combination with other consumptive use control strategies; and

(6) a summary discussion containing recommendations for methods of controlling consumptive uses which methods maximize benefits to the Great Lakes ecosystem and also provide for continued full economic growth for consuming industries as well as other industries which depend on the use of Great Lakes water.

(c) Great Lakes States Defined.—For purposes of this section, the term "Great Lakes States" means Minnesota, Wisconsin, Illinois, Ohio, Michigan, Indiana, Pennsylvania, and New York.

(d) Authorization of Appropriations.—There is authorized to be appropriated for fiscal years beginning after September 30, 1985, $4,500,000 to carry out this section. Sums appropriated under this section shall remain available until expended.

Page 111, line 17, after the period insert the following: "As part of such study, the Administrator shall study appropriate methods of regulating rainfall induced infiltration into the sewer system of the East Bay Municipal Utility District, California.".

Redesignate sections, cross references, and items in the table of contents to conform to the preceding amendments.

Mr. HOWARD (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Mr. HOWARD. Mr. Chairman, the rule on H.R. 8 provided that amendments printed in the July 16 Congressional Record could be offered en bloc and that the bill as so amended would be considered the original bill for purposes of floor action. The unanimous-consent request provided that it is in order for me to offer further amendments as part of the amendments specifically made in order by the rule. The amendments I am offering include amendments printed in the July 16 Congressional Record, perfecting changes to some of those amendments based on information which developed subsequent to their publication, and five items not printed in the July 16 Record. Three of these five amendments are technical in nature, and the other two are minor in nature, providing for funding for treatment works in Nevada County, CA, and Wanaque, NJ.

Mr. STANGELAND. Mr. Chairman, will the gentleman yield?

Mr. HOWARD. I yield to the ranking member of our Subcommittee on Water Resources, the gentleman from Minnesota.

Mr. STANGELAND. I thank the gentleman for yielding.

Mr. Chairman, I rise in strong support of the package of en bloc amendments being offered by the gentleman from New Jersey, the chairman of the Committee on Public Works and Transportation, Mr. HOWARD.

By and large, these amendments merely update and provide minor modifications to the package of amendments that was printed in the CONGRESSIONAL RECORD of July 16, 1985. Among other things, the amendments address perfections to H.R. 8's provisions relating to fundamentally different factor variances, coal remining, administrative penalties, marine sanitation devices, 10-year permits, stormwater discharges, log transfer facilities, antibacksliding, citizen suits, and treatment of Indians under the Clean Water Act.

I believe, with respect to all of these provisions, a very careful balance has been struck that will walk the fine line between the positions of the various competing interests affected by the provisions and, at the same time, move our Clean Water Act and our National Clean Water Program in the direction that we all expect. The package of amendments is an improvement on the language that was previously printed in the CONGRESSIONAL RECORD and I urge my colleagues to join me in adding it here to the bill.

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. HOWARD. I yield to the chairman of the Subcommittee on Water Resources, the gentleman from New Jersey.

Mr. ROE. I thank my chairman for yielding to me on this most important piece of legislation.

Mr. Chairman, I rise in strong support of the amendments offered by Chairman HOWARD and echo the sentiments and the splendid explanation that our good friend, the gentleman from Minnesota, has presented to the House. I strongly support the action that we are undertaking at this point, Mr. Chairman.

The first amendment provides that Federal assistance made available by the Farmers Home Administration to a political subdivision of a State may be used to provide the non-Federal share of a sewage treatment project.

The second amendment requires the States of New York and New Jersey to pay $900,000 and the State of Connecticut to pay $200,000 each year to the Interstate Sanitary Commission. If payments in these amounts are not made, the Administrator is to make grants to the Commission out of program administration funds in the amount of the difference between the amount required to be paid and the amount actually paid.

The third amendment modifies section 15(g) of the reported bill which requires that a State must allocate at least 50 percent of State planning grant funds to regional and interstate planning organizations unless the Administrator after consultation with the Governor determines that such an allocation will not substantially assist in achieving the goals of the act. The modification would require a determination that the allocation did not significantly assist in encouraging participation by the planning organizations as well as assist in achieving the goals of the act.

The fourth amendment modifies the grant program for State revolving funds to require that assistance provided by a State with the revolving fund may be made only for a project consistent with plans developed under sections 204(j) (water quality management plans), section 208 (areawide waste treatment management plans) and section 303(e) (continuing planning process). Also, each State must reserve 1 percent of the revolving fund grants each year for the purposes of carrying out these three sections.

The fifth amendment amends section 301(g) of the act which provides for variances from effluent limitations for conventional pollutants. The amendment provides that variances may be sought only for ammonia, chlorine, color, iron and phenols. The administrator may add pollutants to this list of those for which variances may be sought and may also remove pollutants from this list.

The sixth amendment amends section 301(h) of the act with respect to discharges into marine waters. The amendment provides that in order to obtain a permit for less than secondary treatment where the effluent will be discharged into the ocean the applicant must have in effect a pretreatment program and must provide at least primary treatment. Also, section 307(b)(1) relating to pretreatment removal credits is amended to provide that these credits must be given where effluent limitations will not be violated, and will be no interference with the method of disposal of the sludge and the revised pretreatment standards will not interfer with the operations of a treatment works. The other provisions of section 307(b)(1) relating to effluent limitation and determination of removal by the treatment works remain in effect.

This amendment also prohibits the discharge of sewage treatment effluent into estuaries.

The seventh amendment removes the filing deadline for applications for extensions of the date by which secondary treatment must be achieved and provides that the extension of a filing date does not apply to treatment works which are subject to an administrative or judicial compliance schedule.

The eighth amendment relating to applications for ocean discharge modifications provides that a publicly-owned treatment works which has a contractual arrangement to use a portion of the capacity of an ocean outfall operated by another treatment works which has applied for a modification may also apply for a modification in its own right.

Amendment 9 amends section 301(k) of the act, which permits an extension of the best available technology deadline for toxic pollutants where an innovative process is being developed which will result in the discharge of less pollutant and will have industry-wide application, to permit the same extension for conventional pollutants.

Amendment 10 amends section 16 of the reported bill which permits variances from effluent limitations where fundamentally different factors exist in the facilities and processes of the discharger. The amendment makes the same provision for pretreatment. The amendment also sets dates by which applications must be acted on and requires reports to Congress every 6 months.

Amendment 11 adds a provision to the reported bill which allows the issuance of a permit modifying effluent limitations with respect to the pH level of preexisting discharges and preexisting discharges of iron and manganese from the remined area of a coal remining operation.

Amendment 12 imposes a penalty on any authorized representative of the Administrator who discloses confidential information obtained in the inspection and monitoring of a discharger.

Amendment 13 consists of technical amendments to the penalty provisions of the bill.

Amendment 14 provides for a fine or imprisonment of any person who knowingly violates provisions of the act or permit conditions knowing that he thereby places another person in imminent danger of death or serious bodily injury.

Amendment 15 is a technical amendment to the administrative penalty provision of the bill.

Amendment 16 modifies the civil penalty provision of the bill and provides that a civil penalty may not be assessed with respect to a violation if a penalty has been assessed with respect to the same violation or a violation having substantially the same cause.

Amendment 17 deletes from the administrative penalty provision the authority to compromise, modify or remit a civil penalty.

Amendment 18 modifies the administrative penalty provision by assessing a penalty for late payment of a fine.

Amendment 19 provides that penalties under other provisions of the law shall not apply where a person has paid an administrative penalty for the same violation.

Amendment 20 is a clarifying amendment to the administrative penalties section and provides that where an administrative penalty is being pursued, a citizen suit may not be filed for the same violation.

Amendment 21 clarifies the administrative penalties section by providing that a citizen suit is barred not only by an EPA administrative action but also by a State proceeding under a comparable State law.

Amendment 22 provides that discharges from a deepwater port or a vessel within a deepwater port safety zone which are subject to the Deepwater Port Act are not also subject to the liability and penalty provisions of the Water Pollution Control Act.

Amendment 23 modifies the requirement for marine sanitation devices to provide that a State may impose a more stringent standard for vessels which are used primarily as residences.

Amendment 25 modifies section 26 of the reported bill to provide that a permit with a term not exceeding 10 years issued by a State must be done so in accordance with regulations established by the administrator.

Amendment 26 modifies the provision in section 26 which provides that a permit with a term of not to exceed 10 years may not be granted if toxic and nonconventional pollutants are present in the effluent in more than trace amounts. The amendment removes this restriction with regard to the five nonconventional pollutants for which effluent limitation variances may be granted under section 301(g).

Amendment 27 modifies section 26 as it relates to permits with terms of not to exceed 10 years. Section 26 requires that a permit must be modified promptly to insure compliance with new, more stringent, effluent limitations for toxics or new water quality standards. The amendment clarifies that EPA may also modify permits to ensure compliance with other revised effluent limitations, pretreatment standard, or sewage sludge regulation.

Amendment 28 establishes procedures for the regulation of stormwater discharges. For the period ending December 31, 1989, EPA may not require a permit for discharges composed entirely of stormwater runoff unless the administrator determines in the case of a class or category of discharges that the class or category may be a significant contribution of pollutants or, in the case of an individual discharge, that it violates a water quality standard or is a significant contributor of pollutants.

All discharges from municipal separate storm sewers must be regulated through the permit program.

With regard to discharges from industrial sites, within one year EPA must promulgate regulations identifying the classes and categories for which permits are required. Not later than 6 months after the study of regulation of stormwater runoff required to be undertaken by EPA, then regulations must be revised as necessary to take into account the results of the study. The study is to be submitted to Congress not later than December 31, 1987.

Amendment 29 adds oil and gas transmission facilities to the list of mining, oil or gas operations which do not require a permit for uncontaminated stormwater discharges.

Amendment 30 sets forth a regulatory procedure for log transfer facilities which are required to have a permit under both section 402 and section 404. Where a section 404 permit (discharge of dredged or fill material) has been obtained EPA is to determine, after opportunity for a public hearing, whether the section 404 permit satisfies other requirements of the act. If this is the case, a section 402 permit (discharges of pollutants) need not be applied for. If EPA determines that these other requirements are not satisfied, EPA proposes permit modifications to the Secretary of the Army. If the modifications are not made, then EPA requires that a section 402 permit be obtained.

Amendment 31, "antibacksliding," provides that for a period of 2½ years, a BPJ (best professional judgment) permit, or one based on water quality standards, may not be modified to contain a less stringent effluent limitation, except as provided in a few limited circumstances. Within 2 years of the date of enactment, EPA is to submit a report to Congress on the extent to which States have reviewed, revised and adopted water quality standards pursuant to the 1981 amendments to the Federal Water Pollution Control Act, and the extent to which modifications of permits should be allowed.

Amendment 32 modifies the citizen suits provision of the act to provide that EPA must be notified when such a suit is commenced. Also, no judgment in any action to which the United States is not a party may be binding on the United States.

Amendment 34 provides that "point source" includes a leachate collection system, other than a leachate collection system used for agricultural purposes.

Amendment 35 provides for the cleanup of the Chesapeake and Narragansett Bays, including studies, development of plans, and grant assistance for implementation of the plans.

Amendment 36 authorizes EPA to assist in the study of environmental problems in the New York and New Jersey harbor areas, and to make 50 percent grants for implementation of plans to improve the area.

Amendment 37 authorizes the Administrator to study and develop information on the quality of San Francisco Bay, develop a master plan to reduce pollution loadings in the bay, and to make grants for implementation of the plan.

Amendment 38 establishes a program to improve water quality in estuaries. EPA is authorized to convene management conferences on estuaries in order to develop master plans for the improvement of the environmental quality of estuaries. The participants in the conference include EPA, NOAA, and the States. Fifty percent grants are authorized for implementation of the master plans.

Amendment 39 directs EPA, when establishing national programs to reduce and eliminate pollution, to conduct research on the harmful effects on persons caused by pollutants in water. Special emphasis is to be placed on the effects of bioaccumulation of pollutants in aquatic species. The study will be carried out in conjunction with the Fish and Wildlife Service, the National Oceanic and Atmospheric Administration and other Federal and State agencies.

Amendment 40 requires the Administrator, within 6 months after enactment, to identify those toxic pollutants which may be present in sewage sludge in concentrations which may adversely affect human health or the environment.

The Administrator is also directed to publish regulations specifying acceptable management practices for sewage sludge containing toxic pollutants.

Amendment 41 provides for the development of a comprehensive master plan for Puget Sound, Washington. Fifty percent grants are authorized for implementation of the plan.

Amendment 43 authorizes EPA to issue a research permit to Orange County, CA, for the discharge of preconditioned sludge into the ocean for the purpose of enabling research to be conducted on the effects of disposing sewage sludge in ocean waters. The permit term is for a period of 5 years, and results of monitoring activities must be transmitted to Congress every 6 months. The permit is to be terminated at any time EPA determines that an unacceptable adverse impact on fish, shellfish and wildlife is occurring.

Amendment 44 authorizes EPA to make 50 percent grants to any public water supply system or local government for the provision of alternative water supplies where the water supply system is unable to supply water which is fit for human consumption because of ground water contamination.

Amendment 45 provides that no person may locate or authorize the location of a landfill, surface impoundment, waste pile injection well or land treatment facility over the unconsolidated quarternary aquifer in New Jersey.

Amendment 46 authorizes the Administrator to make 50 percent grants to States for the purpose of assisting the States in carrying out ground water quality protection activities.

Amendment 47 provides for the establishment within EPA of a Great Lakes national program office to develop and implement specific plans to carry out U.S. responsibility under the Great Lakes Water Quality Agreement of 1978, carry out toxic pollutant control demonstration projects and coordinate actions of the agency with other Federal, State and local agencies.

Amendment 48 authorizes the Administrator to make a grant from funds allotted to the State of California for construction of a collection system serving the Glenshire/Devonshire area of Nevada County, CA.

Amendment 49 directs the Administrator to make a grant from funds allotted to the State of New Jersey to the Wanaque Valley Regional Sewerage Authority for the construction of treatment works with a total capacity of 1,050,000 gallons per day.

Amendment 51 authorizes the Administrator in conjunction with State and local agencies to conduct studies of a number of acquifers for the purpose of identifying point and and nonpoint sources of pollution and identifying measures necessary to control such pollution.

Amendment 52 authorizes EPA to conduct a study of control measures which can be implemented to reduce the quantity of Great Lakes water consumption.

Amendment 53 modifies the study of rainfall induced infilitration into sewer systems contained in section 50 to provide that as part of the study EPA will study appropriate methods of regulating such infiltration into the sewage system of the East Bay Municipal Utility District, California.

Amendment 54 is a technical amendment to designate sections, cross references, and other conforming items.

Amendment 50 provides for a grant to the village of Lena, IL, from funds allotted to Illinois, for the construction of a replacement moving bed filter press for the city's treatment works.

Amendment 33 provides that for certain provisions of the Federal Water Pollution Control Act Indian tribes may be treated as States.

Mr. HOWARD. Mr. Chairman, I yield to a member of our Committee on Public Works and Transportation, the gentleman from Georgia [Mr. ROWLAND].

(Mr. ROWLAND of Georgia asked and was given permission to revise and extend his remarks.)

Mr. ROWLAND of Georgia. Mr. Chairman, with the most able and informed leadership of the gentleman from New Jersey, the Committee on Public Works and Transportation has developed amendments to the Clean Water Act that are reasonable and implementable. I am pleased to have been a part of the process and wish to express my appreciation to our leadership for their effective work as well as for their assuring my participation.

Two important concepts have been very evident as we studied the issues and prepared this proposed legislation: A strong commitment to continue our progress toward the goals of the Clean Water Act and the recognition of the important need to accomplish these goals with a minimum of changes and paperwork requirements. The limited resources available at all levels of government must be addressed as we proceed with the Clean Water Program.

I wish to especially commend Chairman ROE, the former head of a State agency where he administered programs related to the many issues addressed in this bill, for his unique ability to identify priorities for reauthorization. The inclusion of topics such as requiring that waters being impacted by toxic pollutants be identified and individual control strategies be developed, as well as the clarification and implementation of further steps to abate nonpoint source pollutants, are examples of establishing our environmental priorities. Examples of the willingness to recognize the importance of efficiency in Government is reflected in the language changes to allow the thousands of small dischargers with nontoxic pollutants to receive 10-year, instead of 5-year permits to allow State and Federal personnel to more effectively address the major sources of pollution.

I am most appreciative of the committee's provision to authorize State revolving loan funds. Transitioning the existing Construction Grant Program to a State revolving loan fund and from a Federal to a State-local program assures a workable continuation of an essential environmental funding mechanism. The concept in this bill will assure a perpetual program without a long-term drain on the Federal budget occurring in an orderly manner with minimal disruption. Chairman ROE's willingness to involve the numerous parties concerned and impacted by this proposed legislation was a key factor in finalizing the bill. I have worked diligently with Mr. Roe to incorporate the views of the administering agencies, environmental leaders as well as the business community. I wish to especially thank him for his acceptance of perticipation by our State administrators through their Association of State and Interstate Water Pollution Control Administrators.

The final issue I wish to bring to your attention is the stormwater runoff permit matter. Changes in the Clean Water Act are essential to allow continuation of priority issues to be addressed by Federal and State personnel. Without any compromise to the environment or reduction in the commitment to clean water we can prevent unnecessary diversion of personnel and other resources to an unproductive paper shuffling exercise by not requiring permits for rainwater runoff from parking lots, and so forth. To implement a workable process I have the assurance of Chairman Roe that he will address my concerns related to adequate future review time by the Congress of this matter, once the U.S. Environmental Protection Agency report is received by this body.

The CHAIRMAN. The time of the gentleman from New Jersey [Mr. Howard] has expired.

(By unanimous consent, Mr. Howard was allowed to proceed for 1 additional minute.)

Mr. HOWARD. Mr. Chairman, I understand that after the adoption of these en bloc amendments the entire bill will be open for amendment to all Members of the House.

Mr. Chairman, I yield back the balance of my time.

Mr. MOLINARI. Mr. Chairman, I move to strike the last word and I rise in support of the amendments offered en bloc.

(Mr. MOLINARI asked and was given permission to revise and extend his remarks.)

Mr. MOLINARI. Mr. Chairman, the Interstate Sanitation Commission [ISC] was formed by an interstate compact between the States of New York, New Jersey, and Connecticut in 1936. It was established to coordinate the water quality management activities of the three party States in the western half of Long Island Sound, the waters of the New York-North Jersey Harbor area, and the lower Hudson River estuarine complex. The commission provides common services to all three States and administers a unified monitoring and regulatory program for the interstate sanitation district.

Aside from the U.S. Environmental Protection Agency, the commission is the only agency which has the jurisdiction to survey and analyze water quality management in the tidal waters of the region as a whole. This has been its mission for almost 50 years. None of the other Federal, State or local agencies operating in the Greater New York-New Jersey-Connecticut region has the experience or the program continuity to depict and assess water quality conditions, discharge factors and their interplay throughout these essentially interstate waterbodies. It is the ISC data base which is at the core of the knowledge about water quality trends, current overall conditions and movement of pollutants from place to place in the estuarine system of the Hudson-Raritan Estuary and Long Island Sound. Moreover, it is the only agency with the implemented mission of using the data base for coordinated regulatory and implementation purposes in order to improve and maintain water quality.

Although it was formed in 1936, historically the responsible States have failed to provide the funding levels necessary to permit the commission to fulfill its mandate.

Yet, even with the comparatively small budget that ISC has received in recent years it has still played a leading role in many of the important matters dealing with pollution of the waters in the region and an increasing role in air pollution as well.

Last year, in 1984, a great deal of controversy took place over the amendment offered by our esteemed chairman of the Public Works and Transportation Committee dealing with the raw sewage that was dumped by New York City into the New York Harbor area. It was the ISC that had the prime responsibility of monitoring the waste discharges from the lower Hudson and New York Harbor that flows into the New Jersey waters of the Raritan Bay and the coast. This has been critical to New Jersey as it has impacted the recreational and fishing uses of its waters.

In the mid-1970's, the ISC traversed most of its district by boat on regular routes and schedules approximately 16 to 18 times per year. On those trips water samples were taken and brought to the commission's lab and analysed for the conventional parameters. Operating on a shoestring budget, the commission was forced to neglect areas even then, such as central Long Island Sound and the northern most part of its district between Yonkers and the Bear Mountain Bridge.

The commission even had to secure older remote automatic monitoring stations by lease from the EPA. These were potentially valuable but in every poor condition. ISC serviced the monitors and kept the system running with the bare minimum of resources.

Despite its substantial needs in the mid-1970's, ISC performed its functions at a reasonable level, better at that time then since then. In the mid-1970's the commission inspected over 450 publicly owned treatment works [POTW's] and performed analyses each year. This number is now down to approximately 250 today. Perhaps even more significant is that private dischargers have never been adequately sampled and inspected and the underfunded levels of ISC prohibited all but very little from being done with the industrial facilities. No private facilities have been monitored this year due to lack of resources. Private dischargers should be kept under constant surveillance and POTW's need adequate coverage. Among other things, the amount of toxics that may be discharged into the waterways cannot be discovered at the present time. The minimum objective of the commission would be to inspect every private discharger and analyze its effluents at least once per year.

Lack of funds has also affected the boat runs. Recently these have been mostly replaced by helicopter flights. These are more expensive per hour, but they can make traversals so much more rapidly that they are worth it in terms of efficiency. Nevertheless, the traversals are now down to four per year. They would undoubtedly be even fewer, except that ISC was able to borrow a federally owned helicopter from EPA. However, scheduling is contingent upon EPA's needs and runs are sometimes in jeopardy because other claims take precedence over the ISC.

ISC provides the only integrated, regionwide data base for water quality in its area. If the deterioration in its program is allowed to continue, proper knowledge of current treatment plants and in-stream effluent and water quality conditions will be lost and the historic data base for planning and regulatory purposes will become progressively outdated. Enforcement will suffer badly.

ISC operations benefit all three States signficantly. For example, the ISC has ordered sewer plant operators in the tristate region to begin year round disinfecting of waste water startng July 1986. Disinfecting waste water is presently only done during warm weather months. This program will help clean up the region's fresh and salt waters and should lead to a reopening of coastal shell fishing beds. It should additionally expand the commercial fishing industry on Long Island and in southern Connecticut and coastal New Jersey. New jobs and economic growth will be generated.

Based upon data and recommendations from the ISC, EPA denied applications from five communities for waivers to permit them to continue dumping raw sewage into the waters of the New York-New Jersey metropolitan area. The ISC opposed all those municipalities and deemed those waters to be too environmentally sensitive to accept sewage effluent treated at less than the secondary level of treatment.

While addressing the problems of water pollution occupies about 75 to 80 percent of the commission's time and resources, ISC also performs monitoring of air pollution. It has been forced to close down a number of its monitoring stations and now has no inspectors in the field between midnight and 8 a.m. The abusers are well aware of the absence of monitoring during those hours and that is the time that they choose to release their deadly booty.

I fully recognize that there has been some opposition to the increased funding levels provided by this legislation before us today by the States involved and their environmental components. That is a sad fact because those are the very agencies which should be the strongest supporters of this funding provision.

I am personally familiar with the functioning of the ISC and I have the highest regard for the job which the agency is performing with very little funding. A $2 million budget may at first blush seem like a lot of money compared to the meager sums allocated each year in the past by the various States, but when we look at what the ISC is expected to perform, this is a very modest sum indeed.

For instance, in air pollution complaints in 1984, the ISC received 1,790 complaints. These citizen complaints are from people who are frightened by the overpowering odors which persist. In my area, citizens do not call the State health department or the department of environmental conservation, or any other health-related agency. The only agency which has been perceived as responsive has been the ISC. This places tremendous burden on a commission which is already overburdened.

We only have to look at the funding levels over the past years to realize how difficult it is to plan ahead in the face of such funding uncertainty. It is especially difficult to run an agency each year if financial resources are not guaranteed to be forthcoming.

The purpose of providing annual funding for the ISC is to: First, insulate the commission from the political pressures it must confront in order to do a good job; and second, increase the levels of funding to an amount which will permit the commission to conduct the round-the-clock monitoring so desperately needed and to continue its difficult mission of cleaning up the estuaries to fishable and swimmable levels.

Finally, I will point out that the funding provision will not require any additional Federal funding. The concept provides a passthrough so that dollars allocated will come out of State grants. This funding is long overdue and I can claim with confidence that its results benefit all three States—New York, New Jersey, and Connecticut. There will be no losers, only winners.

Mr. RAHALL. Mr. Chairman, as a member of the Committee on Public Works and Transportation, I am pleased to rise in support of the committee amendments to H.R. 8.

One of these amendments would add a new section 19 regarding coal remining operations to the bill as reported by the committee and is of great interest to those with a concern for the environment in the coal mining regions of this Nation.

As the author of this provision, I am pleased to say that it is aimed at providing the coal industry with an incentive to remine and reclaim abandoned coal mine lands.

Today, there is an excess of 1 million acres of abandoned coal mine lands with the vast majority located in the Appalachian region. While the Surface Mining Control and Reclamation Act of 1977 created an abandoned mine reclamation program to address the problems created by coal mines left in an orphaned state prior to enactment of the 1977 statute, it is expected that this program—funded by a tax assessed on the coal industry—will resolve only about 20 percent of the problem areas.

As such, from a water quality perspective, many of these abandoned mine lands are currently discharging pollutants and will continue to do so into eternity unless the coal industry can be enticed into remining, and as such, reclaim these lands.

Industry, in many instances, has not been prone to remine abandoned coal mine sites because it would then become liable for treating the preexisting discharges. Treating these discharges is often technically or economically infeasible, especially for the small coal operator.

The provision on remining being offered today is intended to provide the incentive the industry needs to remine and reclaim abandoned coal mine sites.

Under the amendment which I have authored and which is being offered by the committee to H.R. 8, the Administrator, or a State which has permitting authority under section 401(b), may issue an NPDES permit which modifies section 301(b)(2)(A) requirements for the coal mining industry for the level of pH in any preexisting discharge and for preexisting discharges of iron and manganese in situations where a coal operator intends to remine an abandoned coal mine site.

The coal operator would, however, have to apply best available technology economically achievable on a case-by-case basis to these preexisting discharges, using best professional judgment, as well as practices required by the Surface Mining Control and Reclamation Act of 1977. This requirement would replace the BAT and BCT requirements contained in the national guidelines for the specified discharges, but would still lead to the inclusion of specific, albeit modified, numerical effluent limitations in the applicant's permit. This process should retain enough flexibility so that the permit would address either mass loadings or concentration levels of the pollutants, of both. It must be noted that within this context, we are not applying the national standards as defined by section 301(b)(2)(A) of the Federal Water Pollution Control Act, but, rather, a case-by-case application of the best available control technology economically achievable through the use of best professional judgment. It is intended that through the use of best professional judgment, an incentive will be provided to the applicant to remine abandoned coal mine sites.

The permit applicant would have to affirmatively demonstrate to the Administrator or the State, as the case may be, that the coal remining operation will result in the potential for improved water quality. It is expected that the applicant would indicate how the reclamation of the site after completion of the remining activity and/or treatment of the discharge would improve water quality over that existing prior to the remining activity. In addition, the provision requires that the level of pH in any preexisting discharge and preexisting discharges of iron and manganese do not exceed the levels being discharged from the site before the coal remining operation began and that in no event may discharges from the site exceed State water quality standards. There criteria would have to be satisfied during consideration of the reclamation bond release as provided under the Surface Mining Control and Reclamation Act of 1977.

The guiding consideration behind this provision is that its implementation provide an incentive to the coal industry to remine abandoned coal mine lands. Obviously, for situations not addressed by this amendment, the applicable BAT and BCT standards would continue to apply. Finally, it should be noted that new discharges created as a result of remining would not become preexisting discharges when the mine is re-permitted.

Mr. Chairman, a similar version of

this provision passed the House on June 26, 1984, during the last Congress, as part of H.R. 3282. At that time, the distinguished chairman of the Committee on Interior and Insular Affairs, the gentleman from Arizona Morris Udall, and myself engaged in a colloquy to establish additional legislative history concerning the remining amendment. That colloquy, printed in the Congressional Record of June 26, 1984, on page H6910, is applicable to the coal remining amendment being considered today and shoud be considered as part of the legislative history behind this amendment to H.R. 8.

I would also at this time like to provide some background on another provision of the committee amendments which would create a program to address water quality which has deteriorated as a result of high acidity that may reasonably be due to acid deposition or acid mine drainage.

The formulation of this provision as it relates to acid deposition came about during the last Congress due to the concerns of the Subcommittee on Water Resources chairman, Robert Roe; the gentleman from Massachusetts, Brian Donnelly; and myself, over those bodies of water containing high acidity harmful to aquatic life. This year, I proposed to expand the program to include acidity resulting from acid mine drainage which is a major environmental problem in the Appalachian region.

This amendment would authorize a State grant program of $25 million per year for 5 fiscal years with the funds distributed by the EPA Administrator in consultation with the Secretary of the Interior. The funds would be used by the States to mitigate the harmful effects of acid deposition or acid mine drainage to surface waters through, but not limited to, innovative methods of neutralizing and restoring the buffering capacity of those waters and methods of removing toxic substances mobilized by high acidity in those waters.

I would like to comment on the problem of acid mine drainage which is a matter of concern to me not only as a Representative of a coal-producing region, but as chairman of the Subcommittee on Mining and Natural Resources of the Committee on Interior and Insular Affairs.

It is my intention that grants made under this program to mitigate the effects of acid mine drainage on streams, rivers, and lakes be directed at those sites where the cause of the acidity is from abandoned coal mine sites. Abandoned coal mine lands exist throughout the Appalachian region especially, from which effluents of untreated mine drainage and seepage result in the degradation of surface water quality. In this regard, it is essential that in carrying out this aspect of the program, the Bureau of Mines, the U.S. Geological Survey, and the Office of Surface Mining are consulted.

The Bureau of Mines is developing expertise in researching solutions to mitigate acid mine drainage through technological solutions which the States may find useful in their efforts. The USGS cooperative Federal/State coal hydrology program has as its objective the assessment of hydrological conditions related to coal mining and reclamation. This information also would be helpful to the States in surveying waters to be addressed by this program.

It should be noted that the amendment seeks to mitigate the harmful effects of acidity on surface waters, and, in this regard, funding may be used to address the source of the acidic discharge at the abandoned mine site, or directed at the impacted stream or lake itself. With respect to the former, it is my intention as the author of the amendment as it applies specifically to acid mine drainage, that States use this funding to complement moneys received under their State reclamation program grants through the Abandoned Mine Reclamation Fund Program administered by the Office of Surface Mining. Often, these funds are used solely to reclaim an abandoned mine site with respect to recontouring the land and insuring revegetation without addressing any remaining water quality problems.

In this regard, the work of the Acid Mine Drainage Technical Advisory Committee may be of great assistance to the States. This committee, which has received funding from OSM, works under the auspices of the West Virginia Department of Natural Resources and is tackling the problem of acid mine drainage in a highly commendable manner. Indeed, West Virginia has been a leader in efforts to mitigate the problems created by acid mine drainage, and the work of West Virginia University should also be noted.

Further, any projects dealing with acid mine drainage initiated under OSM's new AML research and development program may also be of interest to States involved in the program envisioned by this amendment. The Bureau of Mines also is working on techniques which may be applied at AML sites.

Turning to mitigating the effects of acidity on the surface waters themselves, the West Virginia Department of Natural Resources has developed a limestone drum system powered by the stream flow which serves to reduce water acidity. Continued improvements to, and applications of, this technology should be considered by the States in their programs.

Mr. Chairman, I believe the inclusion of this amendment to H.R. 8 will greatly assist efforts to mitigate surface water acidity. I would like to extend my sincere appreciation to the distinguished chairman of the Subcommittee on Water Resources, Bob Roe, for is understanding of the situation I am seeking to address through this amendment, and the amendment dealing with coal remining.

● Mr. LENT. Mr. Chairman, section 312 of the Federal Water Pollution Control Act addresses marine sanitation devices [MSD's] for all vessels. This provision provides the exclusive authority for requiring these devices on board vessels to regulate vessel sewage. As a consequence, the States are completely preempted from acting in this area. It has been brought to my attention that because of the lack of resources and funding of the Coast Guard, enforcement of MSD requirements has been neglected due to the higher priority of their other responsibilities such as search and rescue and drug law enforcement.

The States, however, have identified specific problems associated with certain vessels and have been frustrated in their inability to act. For example, on Long Island, houseboats have become very popular as an alternative means of housing. However, many of these vessels are virtually stationary barges and cause serious sewage discharge problems in those waterways. The States have been prevented from regulating these houseboats because they technically fall within the definition of vessels and, accordingly, the States have been preempted by section 312.

The change already made by the committee amends the preemption provision in subsection (f) of section 312 by removing houseboats from the definition of vessels. Thus, the States will be able to take action when a vessel's discharge poses a threat to the local environment or public health if it is used as a houseboat. All other provisions of the Federal MSD Program would remain in effect. Only those vessels that are located within a State and used as a residence but not as a means of transportation would be affected by this amendment.

Further clarification contained in the Howard amendment would permit a State to act if a vessel is not "primarily" used as a means of transportation. Occasionally, these vessels are sailed from one place to another and, thus, technically used as a means of transportation. With this clarification, mere incidental use will not provide a loophole to circumvent regulation by a State. I should point out that the normal commercial or recreational vessel would continue to be covered under the auspices of the Federal regulation and be unaffected by this provision.

I want to thank Chairman Roe and Howard, and ranking members Mr. Stangeland and Mr. Snyder, as well as their staffs, for their assistance and cooperation in developing this change to section 312 which is so important to the States. I urge my colleagues to support this amendment and give the States the ability to solve their own local problems with regard to houseboat sewage discharges.●

● Mrs. BURTON of California. Mr. Chairman, I am pleased to rise in support of the committee amendment to H.R. 8, the Water Quality Renewal Act of 1985.

Chairman Howard, Subcommittee Chairman Roe, Mr. Mineta and the many others who contributed to perfecting this package are to be commended for their steady attention and effort to this cause.

I particularly want to praise the work of the Committee on Public Works and Transportation for developing a national program for the maintenance of water quality in estuaries. Estuaries, together with their surrounding saltwater marshes and life-carrying tributaries, are unique ecosystems of great value to man and nature. Yet, for too long, estuaries have been regarded as limitless reservoirs for municipal and industrial wastes. More than 1 million acres of estuarine habitat have been lost nationwide since 1960 and estuaries around the country are facing serious ecological crises.

One of those estuaries is of great concern to me—San Francisco Bay, the largest inland estuary on the west coast. The bay is in serious trouble. Striped bass populations have plummeted 80 percent in the past two decades. Salmon, trout, shad, and dungeness crab populations have also seriously declined. Shellfish have been found in the bay with levels of lead that are the highest ever recorded in scientific literature. The amounts of silver, copper, and mercury found in mussels in a South Bay tidal estuary are among the highest in the Nation.

Ninety-five percent of the bay's original wetlands have been converted to nonwetlands uses, depriving the bay of their vital pollution filtration and wildlife habitat functions.

A recent report produced by the San Francisco-based Citizens for a Better Environment found that municipal sewage treatment plants and industries discharge approximately 860,000 pounds of toxic pollutants, including benzene, toluene, heavy metals, PCB's and industrial solvents, as well as 12 million pounds of oil and grease into the bay every year. A study by the Association of Bay Area Governments identified storm sewers and their loadings of bacteria, fertilizers, metals, gasoline, and oil as a serious source of bay pollution. State and Federal water projects have already dammed and diverted roughly 50 percent of the bay's vital freshwater flows, which would otherwise carry nutrients into the bay system and flush its pollutants out to sea. According to one expert, no more than 30 percent of an estuarine system can be diverted without significantly affecting its fisheries and wildlife.

The proposed committee amendment will enable the Environmental Protection Agency to work closely with State and local officials to protect one of the country's greatest natural resources, the San Francisco Bay estuary. This coordinated program is needed to develop comprehensive solutions to the numerous threats within the estuarine zone that impact the environmental quality of San Francisco Bay.

The San Francisco Bay estuary is an immensely valuable and productive resource. Its estuarine habitat, formed by the confluence of fresh and saltwaters, supports a variety of fish, shellfish, waterfowl, shore birds, and marine mammals. Several fish species of commerical and recreational importance, includng salmon, herring, striped bass, and sturgeon use the bay as nursing grounds or as a migration route for upstream spawning. Dungeness crab, and some bay mussels and clams are also harvested.

Bay wetlands and mudflats provide critical habital for wildlife, including rare and endangered species. The bay also offers tremendous recreational benefits, such as sailing, swimming, and fishing; esthetic enjoyment and opportunities for scientific study.

The physicial dimensions of the bay system are staggering. Nearly 40 percent of the land area in California, or about 40 million acres, drains through the delta, San Francisco Bay, and out the Golden Gate. In comparison, the Chesapeake Bay drainage basin consists of about 41 million acres. Two major river systems, the Sacramento and the San Joaquin, contribute about 90 percent of the estuary's fresh water flow. They drain through California's Central Valley, perhaps the most productive agricultural region in entire country. The bay itself covers about 400 square miles, with depths ranging from just a few feet in the South Bay to more than 300 feet at the Golden Gate.

The San Francisco Bay amendment to H.R. 8 would create a new central role for the Environmental Protection Agency to coordinate and expand efforts to assess the bay's problems and develop timely solutions.

Today, a complex, fragmented jurisdictional morass hinders effective protection of the bay estuary. Given the tremendous size of the bay's estuarine zone with California, the number of government entities with responsibility for bay-related issues is not surprising. Drainage from about 40 separate counties passes through the bay. In addition to three separate agencies with overlapping bay water quality authority, numerous other local, regional, State, and Federal agencies deal with fish and wildlife issues, water resource development, bay fill, pesticide use, oil spill response, and other elements of bay protection. Beyond these fragmented control programs, there is no one central authority for coordination of San Francisco Bay research and monitoring programs or data management. Information crucial to bay policymakers is scattered among various government, academic, and private institutions.

As clearly recognized by the National Estuarine Program proposed to be established under H.R. 8, estuaries need special protection programs beyond the minimum requirements of the existing Clean Water Act. There's not a better candidate for Federal attention under this program than the San Francisco Bay estuary. Although H.R. 8 addresses the needs of Chesapeake Bay, Narragansett Bay, and other estuaries, I hope this same special consideration might be applied to the San Francisco Bay estuarine zone.

It is also my hope that whatever standards, practices, or limitations are recommended in the management plan be as stringent or more stringent than the controls that are currently in effect for the bay estuarine zone under other provisions of the Clean Water Act. In other words, that the corrective actions recommended in the management plan for the bay watershed are to supplement, not contradict or weaken existing controls.

The San Francisco Bay amendment to H.R. 8 is necessary to ensure that EPA participates in a comprehensive effort to protect the sensitive environment of the San Francisco Bay estuary and improve its water quality.

I urge my colleagues to support this measure.●

Mr. GILMAN. Mr. Chairman, I rise in strong support of the committee amendments to H.R. 8, the Water Quality Renewal Act of 1985, legislation reauthorizing the Clean Water Act for fiscal years 1986 through 1994. I would like to commend the gentleman from New Jersey, the distinguished chairman of the Committee on Public Works and Transportation, Mr. HOWARD, for offering these amendments making important improvements to the bill as it was reported out of his committee. I would also like to take this opportunity to thank the gentleman from New Jersey, the chairman of the Subcommittee on Water Resources, Mr. ROE, and the gentleman from Kentucky, The committee' distinguish ranking minority member, Mr. SNYDER, for their successful efforts to achieve bipartisan agreement on this amendment package and for their part in bringing this vitally important legislation affecting both the public health and the environment before us today.

In 1972, Congress adopted the Federal Water Pollution Control Act amendments and in so doing established as its major goal, the reduction and ultimate elimination of discharges of pollutants from municipal sewage systems and industrial plants. Indeed Congress' intent at that time was to make our Nation's waters "swimmable and fishable"; by 1983. While tremendous gains have been made, and while I think we can all attest to sharing a heightened awareness and respect for the beauty of our Nation's waterways and the importance of maintaining that beauty, we have yet to achieve our initial goal. I believe that H.R. 8, if adopted with the committee amendments, will allow us to achieve that goal.

In reviewing the committee's amendment package I am pleased to note the inclusion of language permitting citizen suits against Clean Water Act violators in certain circumstances. The bill reported out of committee gave EPA new authority to assess administrative civil penalties without going to court. While this provision effectively prohibited any citizens suits against such violators once EPA or a State has begun civil administrative action, the committee amendment permits citizens to sue in civil court to abate a violation in the case of a second or ongoing infraction of the Clean Water Act. The addition of this provision is a fair and reasoned compromise and will make those individuals and entities who continue to violate the Clean Water Act answerable in court as well as at the administrative level.

I would also like to commend the committee for strengthening their language with regard to examptions for storm water discharge permits. Under existing law, the EPA must require National Pollution Discharge Elimination System [NPDES] permits for any entity which has storm water runoff on their property. While it was certainly not the intent of Congress to require every school, grocery, and home to require a permit regardless of the environmental hazard they may or may not pose, it is important that we identify and require permits from those sources that do pose a threat to public health and the environment. The amendment being offered by the committee requires EPA to conduct a study and submit their report to Congress in a timely manner on methods for regulatory storm water discharge. It is my understanding that this language enjoys the support of environmentalists and industrialists alike. I commend the committee for successfully addressing this issue.

The committee amendment will also strengthen the provisions in H.R. 8 to prohibit the relaxation of existing pollution control requirements when a permit is reissued, except in unusual circumstances. I strongly support this antibacksliding amendment. It makes good economical and environmental sense that those who have installed control technologies and developed treatment practices be required to continue to use those facilities and practices. I would however, like to take this opportunity to express my concern to the committee members regarding the sunset provision in this antibacksliding language and encourage those members who will be participating in the House-Senate conference to closely consider eliminating this sunset so that we can continue to go forward and not backward in our efforts to control the discharge of pollutants into our waters.

The committee's amendment package also creates an Acid Mitigation Program providing money to States to reduce acidity in lakes and other surface waters; specifies the conditions under which dischargers may obtain variances from national categorical pretreatment standards; and authorizes $10 million per year over a 3-year period for EPA to conduct a study of the New York and New Jersey harbor areas and to make grants for an Interstate Management Program.

While speaking in support of the committee's package, I would also like to take a moment to outline several other major provisions contained in H.R. 8 to improve our efforts to restore and maintain the quality of our waters.

This legislation authorizes $21 billion for the construction of wastewater treatment plants with the grant money falling into two categories. H.R. 8 authorizes $12 billion for the existing Construction Grants Program, and another $9 billion for a program enabling States to establish State revolving loan funds. The Sewer Grant Construction Program has been an integral component in our plan to achieve significant reductions in pollution discharge and I am pleased to note that the committee has extended this program at its current funding level. In my own State of New York the Sewer Grant Construction Program has assisted hundreds of local governments and municipalities to construct sorely needed wastewater treatment facilities, thereby enabling New York to do our part to control and eliminate pollution of our Nation's waters. Indeed, the continuation of this program will allow those municipalities who have not yet taken advantage of the Grant Program or who need additional assistance, to do so within the next 9 years. The revolving loan fund in turn, will provide moneys for the States to make loans, loan guarantees, payments to reduce interest on loans, bond interest subsidies, and bond guarantees to municipalities and agencies after the Federal Grant Program ends. The creation of a revolving loan fund will insure the continued viability of the Sewer Construction Program while replacing the Grant Program with a loan program; concomitant with our pledge to cut Government spending.

H.R. 8 also authorizes $30 million for the Clean Lakes Program. In that respect I am pleased to note that the committee has chosen Greenwood Lake, which I am privileged to represent, as a site for one of two demonstration projects under this program. H.R. 8 authorizes $10 million for the removal of silt, stumps, and other obstructions from these two projects and directs EPA to submit a report to the relevant House and Senate committees, along with further recommendations for measures to improve the water quality of Greenwood Lake. I earnestly thank my colleagues for selecting Greenwood Lake for participation in this project for both my constituents and all the residents of the tristate area who will once again be able to fully utilize this beautiful lake.

The Water Quality Renewal Act of 1985 also authorizes $150 million annually through 1990 for a new program to control nonpoint sources of pollution and directs each State Governor to prepare and submit to EPA a report that identifies areas within the State that: First, will not be able to meet clean water requirements in part due to nonpoint pollution; second, describes the pollutants within these areas; and third, identifies the best management practices and measures to control nonpoint sources of pollution. I am especially pleased with the establishment of this new program as nonpoint source pollution is believed to be responsbile for half of all water pollution. I am hopeful that this program will aid us significantly in our ongoing efforts to address and abate nonpoint source pollution.

Last year this House adopted similar legislation, H.R. 3232 by a sizable margin. Unfortunately the other body was unable to act on this legislation prior to adjournment and another year passed without Congress reauthorizing the Clean Water Act. H.R. 8 is, I believe, an even better bill and deserves our strong support. Accordingly, I urge my colleagues to support this measure inclusive of the committee amendments, so that we can continue our efforts to make our Nation's waters "swimmable and fishable" within the next 10 years.

The CHAIRMAN. The question is on the amendments offered by the gentleman from New Jersey [Mr. HOWARD].

The amendments were agreed to.

The CHAIRMAN. Pursuant to the rule, the substitute committee amendment recommended by the Committee on Public Works and Transportation now printed in the reported bill as modified by the amendments offered by the gentleman from New Jersey [Mr. HOWARD] shall be considered as an original bill for the purpose of amendment under the 5-minute rule by sections, and each section shall be considered as having been read. It shall also be in order to consider an amendment printed in the CONGRESSIONAL RECORD of July 16, 1985, by and if offered by Representative JONES of North Carolina, which shall be considered as having been read.

The Clerk will designate section 1.

The text of section 1 is as follows:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS; AMENDMENTS TO FEDERAL WATER POLLUTION CONTROL ACT; DEFINITION OF ADMINISTRATOR.

(a) SHORT TITLE.—This Act may be cited as the "Water Quality Renewal Act of 1985".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents; amendments to Federal Water Pollution Control Act; definition of Administrator.
Sec. 2. Authorizations of appropriations.
Sec. 3. Authorizations for construction grants.
Sec. 4. Compliance deadlines.
Sec. 5. Individual control strategies for toxic pollutants.
Sec. 6. Policy for control of nonpoint sources of pollution.
Sec. 7. Control of nonpoint sources of pollution.
Sec. 8. Lake restoration guidance manual.
Sec. 9. Small flows clearinghouse.
Sec. 10. Eligible categories of projects.
Sec. 11. Time limit on resolving certain disputes.
Sec. 12. Federal share.
Sec. 13. Agreement on eligible costs; grantee certification of treatment process; turnkey contracts.
Sec 14. Grant conditions; user charges on low-income residential users.
Sec. 15. Allotment of construction grant funds.
Sec. 16. Grants to States for establishment of water pollution control revolving funds.
Sec. 17. Innovative technology compliance deadlines for direct dischargers.
Sec. 18. Variances from the application of effluent limitations.
Sec. 19. Water quality criteria.
Sec. 20. Test procedures.
Sec. 21. Pretreatment standards.
Sec. 22. Criminal penalties.
Sec. 23. Civil penalties.
Sec. 24. Administrative penalties.
Sec. 25. Clean lakes.
Sec. 26. NPDES permits.
Sec. 27. Audits.
Sec. 28. Commonwealth of the Northern Mariana Islands.

Sec. 29. Agricultural stormwater discharges.
Sec. 30. Reports to Congress.
Sec. 31. Newtown Creek, New York.
Sec. 32. San Diego, California.
Sec. 33. Naco, Arizona.
Sec. 34. Limitation on discharge of raw sewage by New York City.
Sec. 35. Deer Island treatment plant, Massachusetts.
Sec. 36. Oakwood Beach and Red Hook projects, New York.
Sec. 37. Chippewa Township, Pennsylvania.
Sec. 38. Des Moines, Iowa.
Sec. 39. Wastewater reclamation demonstration.
Sec. 40. Boston Harbor and adjacent waters.
Sec. 41. Treatment works in Washington State.
Sec. 42. Improvement projects.
Sec. 43. Study of regulation of de minimis discharges.
Sec. 44. Study of effectiveness of innovative and alternative processes and techniques.
Sec. 45. Water quality improvement study.
Sec. 46. Study of testing procedures.
Sec. 47. Study of pretreatment of toxic pollutants.
Sec. 48. Sulfide corrosion study.
Sec. 49. Pulp mill study.
Sec. 50. Study of rainfall induced infiltration into sewer systems.
Sec. 51. Study of pH in discharges from mining operations.
Sec. 52. Study of pollution in Lake Pend Oreille, Idaho.
Sec. 53. Limitation on payments.

(c) AMENDMENT OF FEDERAL WATER POLLUTION CONTROL ACT.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Water Pollution Control Act.

(d) DEFINITION.—For purposes of this Act, the term "Administrator" means the Administrator of the Environmental Protection Agency.

Mr. HOWARD. Mr. Chairman, I ask unanimous consent that the remainder of the committee amendment in the nature of a substitute be printed in the RECORD and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

The text of the remainder of the bill, beginning with section 2, is as follows:

SEC. 2. AUTHORIZATIONS OF APPROPRIATIONS.

(a) RESEARCH AND INVESTIGATIONS.—Section 104(u) is amended—

(1) in clause (1) by inserting after "September 30, 1982," the following: "and not to exceed $22,770,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990,";

(2) in clause (2) by striking out "and $3,000,000 for fiscal year 1982," and inserting in lieu thereof the following: "$3,000,000 for fiscal year 1982, and $3,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990,"; and

(3) in clause (3) by striking out "and $1,500,000 for fiscal year 1982," and inserting in lieu thereof the following: "$1,500,000 for fiscal year 1982, and $1,500,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990,".

(b) GRANTS FOR PROGRAM ADMINISTRATION.—Section 106(a)(2) is amended by inserting after "1982" a comma and the following: "and $75,000,000 per fiscal year for each of the fiscal years 1983, 1984, 1985, 1986, 1987, 1988, 1989, and 1990".

(c) TRAINING GRANTS AND SCHOLARSHIPS.—Section 112(c) is amended by striking out "and $7,000,000 for the fiscal year ending September 30, 1982," and inserting in lieu thereof the following: "$7,000,000 for the fiscal year ending September 30, 1982, and $7,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990,".

(d) AREAWIDE PLANNING.—Section 208(f)(3) is amended by striking out "and" after "1974," and after "1980," and by inserting after "1982" the following: ", not to exceed $100,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, and September 30, 1985, and not to exceed $50,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990".

(e) RURAL CLEAN WATER.—Section 208(j)(9) is amended by striking out "and" after "1981," and by inserting after "1982," the following: "$100,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, and September 30, 1985, and $50,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990,".

(f) INTERAGENCY AGREEMENTS.—Section 304(k)(3) is amended by striking out "1983" and inserting in lieu thereof "1985 and $50,000,000 per fiscal year for the fiscal years 1986 through 1990".

(g) CLEAN LAKES.—Section 314(c)(2) is amended by striking out "and $30,000,000 for fiscal year 1982" and inserting in lieu thereof the following: "$30,000,000 for fiscal year 1982, and $30,000,000 per fiscal year for each of the fiscal years 1983, 1984, 1985, 1986, 1987, 1988, 1989, and 1990".

(h) GENERAL AUTHORIZATION.—Section 517 is amended by striking out "and $161,000,000 for the fiscal year ending September 30, 1982" and inserting in lieu thereof "$161,000,000 for the fiscal year ending September 30, 1982, $160,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, and September 30, 1985, and $110,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990".

SEC. 3. AUTHORIZATIONS FOR CONSTRUCTION GRANTS.

Section 207 is amended by striking out "and September 30, 1985," and inserting in lieu thereof "September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990,".

SEC. 4. COMPLIANCE DEADLINES.

(a) Priority Toxic Pollutants.—Section 301(b)(2)(C) is amended to read as follows:

"(C) for all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established;".

(b) Other Toxic Pollutants.—Section 301(b)(2)(D) is amended by striking out "not later than three years after the date such limitations are established" and inserting in lieu thereof "as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established".

(c) Conventional Pollutants.—Section 301(b)(2)(E) is amended to read as follows:

"(E) for all pollutants identified pursuant to section 304(a)(4) of this Act compliance with effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which shall require application of the best conventional pollutant control technology, as determined in accordance with regulations issued by the Administrator pursuant to section 304(a)(4) of this Act, as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established;".

(d) Other Pollutants.—Section 301(b)(2)(F) is amended to read as follows:

"(F) for all pollutants (other than those subject to subparagraph (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established.".

(e) Deadlines for Regulations for Certain Toxic Pollutants.—The Administrator shall promulgate final regulations establishing effluent limitations in accordance with sections 301(b)(2)(A) and 307(b)(1) of the Federal Water Pollution Control Act for all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives which are discharged from the categories of point sources in accordance with the following table:

Category	*Date by which the final regulation shall be promulgated*
Foundries	*June 30, 1985.*
Nonferrous metals forming.	*June 30, 1985.*
Organic chemicals and plastics and synthetic fibers.	*March 31, 1986.*
Pesticides	*August 31, 1985.*
Nonferrous metals (phase II).	*July 31, 1985.*

SEC. 5. INDIVIDUAL CONTROL STRATEGIES FOR TOXIC POLLUTANTS.

(a) In General.—Section 304 is amended by adding at the end thereof the following new subsection:

"(l) Individual Control Strategies for Toxic Pollutants.—

"(1) State list of navigable waters.—Not later than one year after the date of the enactment of this subsection, each State shall submit to the Administrator for review, approval, and implementation under this subsection—

"(A) a list of all navigable waters in such State for which the State does not expect the applicable standard under section 303 of this Act will be achieved after the requirements of sections 301(b), 306, and 307(b) are met, due entirely or substantially to discharges from point sources of any toxic pollutants listed pursuant to section 307(a);

"(B) for each segment of the navigable waters included on such list, a determination of the specific point sources discharging any such toxic pollutant which is believed to be preventing or impairing such water quality and the amount of each such toxic pollutant discharged by each such source; and

"(C) for each such segment, an individual control strategy which the State determines will produce a reduction in the discharge of toxic pollutants from point sources identified by the State under this paragraph through the establishment of effluent limitations under section 302 of this Act and water quality standards under section 303(c)(4)(B) of this Act, which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than three years after the date of the establishment of such strategy.

"(2) Approval or disapproval.—Not later than 120 days after the last day of the one-year period referred to in paragraph (1), the Administrator shall approve or disapprove the control strategies submitted under paragraph (1) by any State.

"(3) Administrator's list of navigable waters.—If a State fails to submit control strategies in accordance with paragraph (1) or the Administrator does not approve the control strategies submitted by such State in accordance with paragraph (1), then, not later than one year after the last day of the period referred to in paragraph (2), the Administrator, in cooperation with such State and after notice and opportunity for public comment, shall publish in the Federal Register a list of all navigable waters in such State for which the Administrator does not expect the applicable standard under section 303 of this Act will be achieved after the requirements of sections 301(b), 306, and 307(b) are met, due entirely or substantially to discharges from point sources of any toxic pollutants listed pursuant to section 307(a). For each segment of the navigable waters included on such list, the Administrator shall determine the specific point sources discharging any such toxic pollutant which is believed to be preventing or impairing such water quality and the amount of each such toxic pollutant discharged by each such source. At a minimum, the Administrator shall consider for listing under this subsection any navigable waters for which any person submits a petition to the Administrator for listing not later than 120 days after such last day.

"(4) Administrator's development and publication.—Not later than one year after the date of publication of the list required by paragraph (3) of this subsection, the Administrator, in cooperation with the States, shall issue proposed regulations setting

forth, for each segment of the navigable waters listed under paragraph (3), an individual control strategy. Each individual control strategy shall produce a reduction in the discharge of toxic pollutants from point sources identified by the Administrator under paragraph (3) through the establishment of effluent limitations under section 302 of this Act and water quality standards under section 303(c)(4)(B) of this Act, which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than three years after the date of promulgation of the final strategy. Not later than 180 days after issuing the proposed regulations, the Administrator shall promulgate each individual control strategy as a final regulation.

"(5) IMPLEMENTATION.—The Administrator shall implement each individual control strategy established or promulgated under this subsection by modifying or requiring the modification of permits under section 402 of this Act.".

(b) JUDICIAL REVIEW.—Section 509(b)(1) is amended by striking out "and (F)" and inserting in lieu thereof "(F)" and by inserting after "any permit under section 402," the following: "and (G) in promulgating any individual control strategy under section 304(l),".

SEC. 6. POLICY FOR CONTROL OF NONPOINT SOURCES OF POLLUTION.

Section 101(a) is amended by striking out "and" at the end of paragraph (5), by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and", and by adding at the end thereof the following:

"(7) it is the national policy that plans for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this Act to be met through the control of both point and nonpoint sources of pollution.".

SEC. 7. CONTROL OF NONPOINT SOURCES OF POLLUTION.

(a) IN GENERAL.—Title III is amended by adding at the end the following new section:

"SEC. 319. NONPOINT SOURCE CONTROL PROGRAMS.

"(a) STATE ASSESSMENT REPORTS.—

"(1) CONTENTS.—The Governor of each State shall prepare and submit to the Administrator for his approval, a report which—

"(A) identifies those portions of the navigable waters within the State which, as a result (in whole or in part) of pollution from nonpoint sources, are not meeting applicable water quality standards or the goals and requirements of this Act;

"(B) identifies those categories and subcategories of nonpoint sources which add significant pollution to each portion of the navigable waters identified under subparagraph (A) in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;

"(C) identifies and describes State and local programs for controlling pollution added from nonpoint sources to, and improving the quality of, each such portion of the navigable waters, including but not limited to those programs which are receiving Federal assistance under subsection (i); and

"(D) describes the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control each category and subcategory of nonpoint sources identified under subparagraph (B) and to reduce, to the maximum extent practicable, the level of pollution resulting from such category or subcategory.

"(2) INFORMATION USED IN PREPARATION.—Each report submitted under paragraph (1) shall be based on available information including, but not limited to, information available under sections 208, 303(e), 304(f), and 305(b) of this Act, and may include all or part of any water quality management program approved under section 208 or 303 of this Act.

"(b) STATE PLANS.—

"(1) IN GENERAL.—The Governor of each State shall prepare and submit to the Administrator for his approval—

"(A) a plan which such State proposes to implement in the first four fiscal years beginning after the date of submission of such plan for controlling pollution added from nonpoint sources to the navigable waters within the State and improving the quality of such waters; and

"(B) a report which (i) identifies each department, agency, or instrumentality of the United States and each department, agency, or instrumentality of the State which is likely to be engaging in, supporting, or providing financial assistance in each of such fiscal years for any activity or program in the State which, if carried out, would be inconsistent with implementation of such plan in such fiscal years, and (ii) recommends to the Administrator methods by which such Federal department, agency, or instrumentality could modify administration of such activity or program, and describes methods by which such State department, agency, or instrumentality intends to modify administration of such activity or program, so that such activity or program is consistent with, and assists the State in implementation of, such plan.

"(2) SPECIFIC CONTENTS.—Each plan proposed for implementation under this subsection shall specify—

"(A) from among those portions of navigable waters significantly affected by pollution added from nonpoint sources, each portion and land area contributing such pollution with respect to which the State plans to assist, encourage, or require implementation of best management practices and measures in the first four fiscal years beginning after the date of submission of such plan;

"(B) the order in which, and the schedule under which, the State plans to assist, encourage, or require implementation of such practices and measures in such fiscal years;

"(C) from among those categories and subcategories of nonpoint sources of pollution which contribute to each portion specified under subparagraph (A) not meeting applicable water quality standards or the goals and requirements of this Act, the categories and subcategories with respect to which the State plans to assist, encourage, or require implementation of such practices and measures in such fiscal years and the relative contribution of such pollution by category and subcategory of such sources;

"(D) the best management practices and measures the implementation of which the State plans to assist, encourage, or require in each of such fiscal years to reduce pollution resulting from nonpoint sources and to improve water quality;

"(E) the methods (including, but not limited to, demonstration, enforcement, technical *assistance, education, training, and cost-sharing programs), by category and subcategory of such sources of pollution, which the State plans to use to encourage, assist, or require implementation of such practices and measures in such fiscal years; and*

"(F) sources of Federal and other assistance (other than assistance provided under subsection (i)) which will be available in each of such fiscal years for supporting implementation of such practices and measures and the purposes for which such assistance will be used in each of such fiscal years.

"(3) CERTIFICATION OF LEGAL AUTHORITY.—Each plan submitted by a State under this subsection shall be accompanied by a certification of the attorney general of the State or the chief attorney of any State water pollution control agency which has independent legal counsel that the laws of the State provide adequate authority to implement such plan or if there is not such adequate authority, a list of such additional authority which will be necessary to implement such plan.

"(4) IMPLEMENTATION SCHEDULE.—The schedule required by paragraph (2)(B) shall establish for each category and subcategory of nonpoint sources of pollution specified under paragraph (2)(C) an expeditious time period for implementation of best management practices and measures specified under paragraph (2)(D) and shall indicate the estimated dates for implementation of such practices and measures.

"(5) UTILIZATION OF LOCAL AND PRIVATE EXPERTS.—In developing and implementing a plan under this subsection, a State shall, to the maximum extent practicable, utilize local public and private agencies and organizations which have expertise in control of nonpoint sources of pollution.

"(6) DEVELOPMENT ON WATERSHED BASIS.—A State shall, to the maximum extent practicable, develop and implement a plan under this subsection on a watershed-by-watershed basis.

"(c) ADMINISTRATIVE PROVISIONS.—

"(1) COOPERATION REQUIREMENT.—Any report required by subsection (a) and any plan and report required by subsection (b) shall be developed in cooperation with local, regional, and interstate entities which are actively planning for the implementation of non-point source pollution controls and have either been certified by the Administrator in accordance with section 208, have worked jointly with the State on water quality management planning under section 205(j), or have been designated by the State legislative body or Governor as water quality management planning agencies for their geographic areas.

"(2) TIME PERIOD FOR SUBMISSION OF REPORTS AND PLANS.—Each report and plan shall be submitted to the Administrator during the 270-day period beginning on the date of the enactment of this section; except that upon request of the Governor, the Administrator shall extend such period for not to exceed an additional 270 days.

"(3) FAILURE OF STATE TO SUBMIT REPORT.—If a Governor of a State does not submit the report required by subsection (a) during such period, the Administrator shall prepare a report for such State which makes the identifications required by paragraphs (1)(A) and (1)(B) of subsection (a).

"(d) CONSOLIDATION OF RECOMMENDATIONS FOR UNITED STATES AGENCIES.—The Administrator shall consolidate recommendations for modifications of activities and programs submitted by the States under subsection (b)(1)(B) and submit such consolidated recommendations to the appropriate departments, agencies, and instrumentalities of the United States. Each such department, agency, or instrumentality, to the maximum extent practicable and consistent with existing law, shall accommodate such recommendations and shall carry out its own activities and programs in a manner which is consistent with, and will assist implementation of, the plan submitted by the State under subsection (b) and approved by the Administrator under this section.

"(e) APPROVAL OR DISAPPROVAL OF REPORTS AND PLANS.—

"(1) DEADLINE.—Subject to paragraph (2), not later than 180 days after the date of submission to the Administrator of any report or plan under this section (other than subsections (i) and (j)), the Administrator shall either approve or disapprove such report or plan, as the case may be. The Administrator may approve a portion of a plan under this subsection. If the Administrator does not disapprove a report, plan, or portion of a plan in such 180-day period, such report, plan, or portion shall be deemed approved for purposes of this section.

"(2) PROCEDURE FOR DISAPPROVAL.—If, after notice and opportunity for public comment and consultation with appropriate Federal and State agencies and other interested persons, the Administrator determines that a plan submitted under subsection (b) or any portion thereof is not likely to satisfy, in whole or in part, the goals and requirements of this Act, that adequate authority does not exist, or adequate resources are not available, to implement such plan or portion, that the schedule for implementing such plan or portion is not sufficiently expeditious, or that the practices and measures proposed in such plan or portion are not adequate to improve the quality of navigable waters in the State and to reduce the level of pollution in navigable waters in the State resulting from nonpoint sources, the Administrator shall disapprove the plan or portion thereof with respect to which the Administrator makes such determination. The Administrator shall notify the State of such disapproval and request specific revisions of such plan or portion necessary to obtain approval of such plan or portion. Not later than 90 days after the date of such notification, the State shall submit to the Administrator for his approval under this subsection its revisions of such plan or portion.

"(f) LOCAL PLANS; TECHNICAL ASSISTANCE.—If a State fails to submit a plan under subsection (b) or the Administrator does not approve such a plan, a local public agency or organization which has expertise in, and authority to, control water pollution resulting from nonpoint sources in any area of such State which the Administrator determines is of sufficient geographic size may, with approval of such State, request the Administrator to provide, and the Administrator shall provide, technical assistance to such agency or organization in developing for such area a plan which is described in subsection (b) and meets the requirements of subsection (e). After development of such plan, such agency or organization shall submit such plan to the Administrator for his approval. If the Administrator approves such plan, such agency or organization shall be eligible to receive financial assistance under subsection (i) for implementation of such plan as if such agency or organization were a State for which a report submitted

under subsection (a) and a plan submitted under subsection (b) were approved under this section. Such financial assistance shall be subject to the same terms and conditions as assistance provided to a State under subsection (i).

"(g) Technical Assistance for States.—Upon request of a State, the Administrator may provide technical assistance to such State in developing a plan under subsection (b) for those portions of the navigable waters requested by such State.

"(h) Interstate Management Conference.—

"(1) Convening of conference; notification; purpose.—If any portion of the navigable waters in any State which is implementing a plan approved under this section is not meeting applicable water quality standards or the goals and requirements of this Act as a result, in whole or part, of pollution from nonpoint sources in another State, such State may petition the Administrator to convene, and the Administrator shall convene, a management conference of all States which contribute pollution resulting from nonpoint sources to such portion. If, on the basis of information available to him, the Administrator determines that a State is not meeting applicable water quality standards or the goals and requirements of this Act as a result, in whole or part, of pollution from nonpoint sources in another State, the Administrator shall notify such States. The Administrator may convene a management conference under this paragraph not later than 180 days after giving such notification, whether or not the State which is not meeting such standards requests such conference. The purpose of such conference shall be to develop an agreement among such States to reduce the level of pollution in such portion resulting from nonpoint sources and to improve the water quality of such portion.

"(2) State plan requirement.—Each State which contributes significant pollution from nonpoint sources to the portion of navigable waters in amounts which contribute to such portion not meeting applicable water quality standards or the goals and requirements of this Act shall submit to the Administrator for his approval a plan referred to in subsection (b) to reduce the level of pollution in such portion resulting from nonpoint sources in such State and to improve the quality of such portion; except that if such State has an approved plan under subsection (b), such State shall revise such plan to reduce the level of pollution in such portion resulting from nonpoint sources in such State and to improve the water quality of such portion and submit such revised plan to the Administrator for his approval under this section. Such plan or revised plan shall be consistent with existing Federal and State law. After approval, the State shall implement such plan or revised plan.

"(i) Grant Program.—

"(1) Grants for implementation of plans.—Upon application of a State for which a report submitted under subsection (a) and a plan submitted under subsection (b) is approved under this section, the Administrator shall make grants under this subsection to such State for the purpose of assisting the State in implementing such plan.

"(2) Applications.—An application for a grant under this subsection in any fiscal year shall be in such form and shall contain such other information as the Administrator may require, including an identification and description of the best management practices and measures which the State proposes to assist, encourage, or require in such year with the Federal assistance to be provided under the grant.

"(3) Federal share.—

"(A) In general.—The Federal share of the cost of each plan implemented with Federal assistance under this subsection in any fiscal year shall not exceed 50 percent of the cost incurred by the State in implementing such plan.

"(B) Exception.—The Federal share of those costs of any such plan which are attributable to a watershed area with respect to which the Administrator determines that a significant number of non-Federal, non-State interests of such area are willing and able to enter into agreements to participate in such year in nonpoint source pollution control measures under such plan shall be not less than 50 percent and not more than 60 percent of such cost.

"(C) Limitation on administrative costs.—For purposes of this paragraph, administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against activities and programs carried out with a grant under this subsection shall not exceed in any fiscal year 10 percent of the amount of the grant in such year, except that costs of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer programs shall not be subject to this limitation.

"(4) Maintenance of effort.—No grant may be made to a State under this subsection in any fiscal year unless such State enters into such agreements with the Administrator as the Administrator may require to ensure that such State will maintain its aggregate expenditures from all other sources for programs for controlling pollution added to the navigable waters in such State from nonpoint sources and improving the quality of such waters at or above the average level of such expenditures in its two fiscal years preceding the date of enactment of this subsection.

"(5) Reporting and other requirements.—

"(A) Report.—Each State which receives a grant under this subsection in any fiscal year shall submit to the Administrator a written report which describes the activities and programs carried out in the State under such grant and the progress made by such State in meeting the schedule specified under subsection (b)(2)(B).

"(B) Satisfactory progress.—No grant may be made under this subsection in any fiscal year to a State which in the preceding fiscal year received a grant under this subsection unless the Administrator determines that such State made satisfactory progress in such preceding fiscal year in meeting the schedule specified by such State under subsection (b)(2)(B).

"(6) Limitation on grant amounts.—Notwithstanding any other provision of this subsection, not more than 15 percent of the amount appropriated to carry out this subsection may be used to make grants to any one State, including any grants to any local public agency or organization with authority to control pollution from nonpoint sources in any area of such State.

"(7) Priority for effective regulatory mechanisms.—For each fiscal year beginning after September 30, 1987, the Administrator may give priority in making grants under this subsection, and shall give consideration

in determining the Federal share of any such grant, to any State which has included effective regulatory mechanisms in an approved State plan under this section and has implemented such mechanisms in the preceding fiscal year. Such mechanisms shall include, but are not limited to, deadlines for implementation of best management practices and enforcement procedures to ensure implementation of such plan.

"(8) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection not to exceed $150,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990. Sums appropriated to carry out this subsection shall remain available until expended.

"(j) REPORTS OF ADMINISTRATOR.—

"(1) ANNUAL REPORTS.—Not later than January 1, 1986, and each January 1 thereafter the Administrator shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate, a report for the preceding fiscal year on the activities and programs implemented under this section and the progress made in reducing pollution in the navigable waters resulting from nonpoint sources and improving the quality of such waters.

"(2) FINAL REPORT.—Not later than January 1, 1989, the Administrator shall transmit to Congress a final report on the activities carried out under this section. Such report, at a minimum, shall include—

"(A) an analysis of the effectiveness of plans carried out under this section and of the best management practices and measures utilized under those plans in controlling nonpoint sources of pollution;

"(B) an analysis of the level of State participation in implementing such plans; and

"(C) recommendations of the Administrator concerning future programs (including enforcement programs) for controlling pollution from nonpoint sources.

"(k) SET ASIDE FOR ADMINISTRATIVE PERSONNEL.—Not less than 5 percent of the funds appropriated to carry out subsection (i) for any fiscal year shall be available to the Administrator to maintain personnel levels at the Environmental Protection Agency at levels which are adequate to carry out this section in such year.".

(b) CONFORMING AMENDMENT.—Section 304(k)(1) of the Federal Water Pollution Control Act is amended by inserting "and 319" after "208".

SEC. 8. LAKE RESTORATION GUIDANCE MANUAL.

Section 104(h) is amended by inserting "(1)" after "(h)" and by adding at the end thereof the following:

"(2) The Administrator shall submit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than one year after the date of the enactment of this paragraph a lake restoration guidance manual establishing procedures to guide future State and local efforts to improve water quality in lakes.".

SEC. 9. SMALL FLOWS CLEARINGHOUSE.

Section 104(q) is amended by adding at the end thereof the following new paragraph:

"(4) Notwithstanding section 205(d) of this Act, from amounts that are set aside for a fiscal year under section 205(i) of this Act and are not obligated by the end of the 24-month period of availability for such amounts under section 205(d), the Administrator shall make available $1,000,000 or such unobligated amount, whichever is less, to support a national clearinghouse within the Environmental Protection Agency to collect and disseminate information on small flows of sewage and innovative or alternative wastewater treatment processes and techniques, consistent with paragraph (3). This paragraph shall apply with respect to amounts set aside under section 205(i) for which the 24-month period of availability referred to in the preceding sentence ends on or after September 30, 1985.".

SEC. 10. ELIGIBLE CATEGORIES OF PROJECTS.

(a) COLLECTOR SEWERS AND COMBINED SEWER OVERFLOWS.—The second sentence of section 201(g)(1) is amended by striking out "appurtenances, and" and inserting in lieu thereof "appurtenances," and by striking out the period at the end of such sentence and inserting in lieu thereof the following: ", and projects to address water quality problems due to impacts of discharges from combined stormwater and sanitary sewer overflows.".

(b) NONPOINT SOURCES.—The last sentence of section 201(g)(1) is amended by—

(1) striking out "sentence," the first place it appears and inserting in lieu thereof "sentences,";

(2) inserting "(A)" after "October 1, 1984, for"; and

(3) inserting before "except that" the following: "and (B) any purpose for which a grant may be made under section 319(i) of this Act (including any innovative and alternative approaches for the control of nonpoint sources of pollution),".

SEC. 11. TIME LIMIT ON RESOLVING CERTAIN DISPUTES.

Section 201 is amended by adding at the end thereof the following new subsection:

"(p) TIME LIMIT ON RESOLVING CERTAIN DISPUTES.—In any case in which a dispute arises with respect to the awarding of a contract for construction of treatment works by a grantee of funds under this title and a party to such dispute files an appeal with the Administrator under this title for resolution of such dispute, the Administrator shall make a final decision on such appeal within 60 days of the filing of such appeal.".

SEC. 12. FEDERAL SHARE.

(a) COMBINED SEWER OVERFLOWS.—The last sentence of section 202(a)(1) is amended—

(1) by inserting after "correction" the first place it appears the following: "or a project to address water quality problems due to impacts of discharges from combined storm water and sanitary sewer overflows"; and

(2) by striking out "and" after "interceptors," and by inserting after "correction" the third place it appears the following: ", and project to address such problems".

(b) PROJECTS UNDER JUDICIAL INJUNCTION.—Section 202(a)(1) is amended by adding at the end thereof the following: "Notwithstanding the first sentence of this paragraph, in the case of a project for which an application for a grant under this title has been made to the Administrator before October 1, 1984, and which project is under judicial injunction on such date prohibiting its construction, such project shall be eligible for grants at 75 percent of the cost of construction thereof.".

(c) BIODISC EQUIPMENT.—Section 202(a)(3) is amended by inserting at the end thereof the following: "In addition, the Administra-

tor is authorized to make a grant to fund all of the costs of the modification or replacement of biodisc equipment (rotating biological contractors) in any publicly owned treatment works if the Administrator finds that such equipment has failed to meet design performance specifications, unless such failure is attributable to negligence on the part of any person, and if such failure has significantly increased capital or operating and maintenance expenditures.".

(d) INNOVATIVE PROCESS.—The activated bio-filter feature of the project for treatment works of the city of Little Falls, Minnesota, shall be deemed to be an innovative wastewater process and technique for purposes of section 202(a)(2) of the Federal Water Pollution Control Act and the amount of any grant under such Act for such feature shall be 85 percent of the cost thereof.

SEC. 13. AGREEMENT ON ELIGIBLE COSTS; GRANTEE CERTIFICATION OF TREATMENT PROCESS; TURNKEY CONTRACTS.

(a) AGREEMENT ON ELIGIBLE COSTS; GRANTEE CERTIFICATION.—Section 203(a) is amended by inserting "(1)" after "(a)", by designating the last sentence as paragraph (4) and indenting such sentence as a paragraph, and by inserting before paragraph (4) as so designated the following:

"(2)(A) Before taking final action on any plans, specifications, and estimates submitted under this subsection, the Administrator shall enter into a written agreement with the applicant which establishes and specifies which items of the proposed project are eligible for Federal payments under this section. The Administrator may not later modify such eligibility determinations unless they are found to have been made in violation of applicable Federal statutes and regulations.

"(B) Eligibility determinations under this paragraph shall not preclude the Administrator from auditing a project pursuant to section 501 of this Act, or other authority, or from withholding or recovering Federal funds for costs which are found to be unreasonable, unsupported by adequate documentation, or otherwise unallowable under applicable Federal cost principles, or which are incurred on a project which fails to meet the design specifications or effluent limitations contained in the grant agreement and permit pursuant to section 402 of this Act for such project.

"(3) The approval of construction plans and specifications by the Administrator under this section shall not include a determination or approval of the treatment work's unit processes, or the configuration of the treatment work's unit processes, which constitute the treatment technology. The Administrator shall not approve plans, specifications, and estimates for a project under this section unless the applicant certifies that the proposed unit processes and treatment technology are capable of meeting the effluent limitations for which such process and technology are designed.".

(b) TURNKEY CONTRACTS.—Section 203 is amended by adding at the end thereof the following new subsection:

"(f) TURNKEY CONTRACTS.—

"(1) GENERAL AUTHORITY FOR LOW COST PROJECTS.—After completion of an approved facility plan for construction of a treatment works which has an estimated total cost of $8,000,000 or less (as determined by the Administrator), the applicant proposing to construct such treatment works may, in lieu of proceeding under the other provisions of this section, enter into an agreement with the Administrator under this subsection for the preparation of construction plans and specifications and the building and erection of such treatment works.

"(2) REQUIRED TERMS AND CONDITIONS.—An agreement entered into under this subsection shall—

"(A) set forth an amount agreed to by the Administrator and the applicant as the maximum Federal contribution to the project, based upon a determination of the federally eligible costs of the project at the applicable Federal share under section 202 of this Act;

"(B) set forth a date for completion of construction of the treatment works by the applicant and a schedule of payments by the Administrator of the Federal contribution to the project;

"(C) contain such assurances by the applicant as the Administrator may require that (i) the proposed treatment works will be an operable unit and will meet all the requirements of this title (except as otherwise provided in paragraph (3) of this subsection), and (ii) not later than one year after the date specified as the date for completion of construction of the treatment works, the treatment works will be operating so as to meet the requirements of any applicable permit for such treatment works under section 402 of this Act;

"(D) require the applicant and any agent or contractor of the applicant to provide a bond in an amount determined necessary by the Administrator to protect the Federal interest in the project; and

"(E) contain such other terms and conditions as the Administrator deems necessary to ensure compliance with this title (except as provided in paragraph (3) of this subsection).

"(3) NONAPPLICABILITY OF CERTAIN STATUTORY REQUIREMENTS.—Sections 201(g)(3), 203 (other than this subsection and except with respect to the development and approval of a facility plan), 204(a)(5), 204(a)(6), and 204(d)(1) shall not apply to grants made pursuant to this subsection.

"(4) INTEREST-BEARING ACCOUNTS.—

"(A) DEPOSIT OF FEDERAL CONTRIBUTION.—Upon entering into an agreement under this subsection, the Administrator shall deposit, from amounts allotted to the State for such fiscal year under section 205 of this Act, the amount of the Federal contribution to the project agreed upon by the Administrator and the applicant into an interest-bearing account. Such amount shall be available only for making payments to the grantee in accordance with the schedule contained in the agreement.

"(B) LIMITATION ON USE OF EARNED INTEREST.—Interest earned on amounts in the account under subparagraph (A) shall be available for payments to the grantee. Such payments shall be made solely for the purpose of reducing the net interest costs incurred by the grantee on obligations issued by the grantee for construction of such treatment works. The amount of such payments shall be in addition to the Federal share of the project otherwise allowable. The amount of any such interest earned which exceeds the amount of such interest costs incurred shall be deposited in the general fund of the Treasury after the final audit of the project.

"(5) ADMINISTRATIVE PROVISIONS.—

"(A) RESERVATION UNTIL FINAL AUDIT.—The Administrator shall reserve a portion of the amount in the account under paragraph (4)(A) until the final audit of the project.

"(B) Reallotment of any excess.—If the amount deposited into the account by the Administrator under paragraph (4)(A) exceeds the cost of preparing construction plans and specifications and the building and erection of the treatment works, the Administrator shall reallot the amount of the excess to the State in which such treatment works is located for the fiscal year in which such audit is completed.

"(6) Per state limitation.—The Administrator shall not obligate more than 20 percent of the amount allotted to a State for a fiscal year under section 205 of this Act for grants pursuant to this subsection.

"(7) Limitation on federal contribution.—In no event shall the Federal contribution for the cost of preparing construction plans and specifications and the building and erection of treatment works pursuant to this subsection exceed the amount agreed upon under paragraph (2), plus interest paid to the grantee under paragraph (4)(B).

"(8) Noncompliance with agreement.—In any case in which the recipient of a grant made pursuant to this subsection does not comply with the terms of the agreement entered into under paragraph (2), the Administrator is authorized to take such action as may be necessary to recover the amount of the Federal contribution to the project.

"(9) Limitation on eligibility of recipients of turnkey grants.—A recipient of a grant made pursuant to this subsection shall not be eligible for any other grants under this title.".

SEC. 14. GRANT CONDITIONS; USER CHARGES ON LOW-INCOME RESIDENTIAL USERS.

(a) Inclusion of Project in Areawide Plan.—Section 204(a)(1) is amended to read as follows:

"(1) that any required areawide waste treatment management plan under section 208 of this Act (A) is being implemented for such area and the proposed treatment works are included in such plan, or (B) is being developed for such area and reasonable progress is being made toward its implementation and the proposed treatment works will be included in such plan;".

(b) Continuing Planning Process.—Section 204(a)(2) is amended to read as follows:

"(2) that (A) the State in which the project is to be located (i) is implementing any required plan under section 303(e) of this Act and the proposed treatment works are in conformity with such plan, or (ii) is developing such a plan and the proposed treatment works will be in conformity with such plan, and (B) such State is in compliance with section 305(b) of this Act;".

(c) User Charges on Low-Income Residential Users.—Section 204(b)(1) is amended by adding at the end thereof the following: "A system of user charges which imposes a lower charge for low-income residential users (as defined by the Administrator) shall be deemed to be a user charge system meeting the requirements of clause (A) of this paragraph if the Administrator determines that such system was adopted after public notice and hearing.".

(d) Effective Date.—This section shall take effect on the date of the enactment of this Act, except that the amendments made by subsections (a) and (b) shall take effect on the last day of the two-year period beginning on such date of enactment.

SEC. 15. ALLOTMENT OF CONSTRUCTION GRANT FUNDS.

(a) Formula.—

(1) Date of allotment.—Section 205(c)(2) is amended by inserting after the first sentence the following: "Sums authorized to be appropriated pursuant to section 207 for the fiscal years 1986, 1987, 1988, 1989, and 1990 shall be allotted for each such year by the Administrator not later than the tenth day which begins after the date of the enactment of the Water Quality Renewal Act of 1985.".

(2) Extension.—Section 205(c)(2) is further amended by striking out "and September 30, 1985," and inserting in lieu thereof "September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990,".

(b) Minimum Allotment.—

(1) Extension.—Section 205(e) is amended by striking out "and 1985" each place it appears and inserting in lieu thereof "1985, 1986, 1987, 1988, 1989, and 1990".

(2) Territories.—The first sentence of section 205(e) is amended—

(A) by inserting "the Commonwealth of the Northern Mariana Islands," after "Samoa,";

(B) by striking out "thirty-three one-hundredths of 1 per centum" and inserting in lieu thereof "two-thirds of one percent"; and

(C) by striking out "four" and inserting in lieu thereof "five".

(c) Costs of Administration.—Section 205(g)(1) is amended by striking out "1985" and inserting in lieu thereof "1990" and by striking out the period after "4 per centum" and inserting in lieu thereof a comma.

(d) Interstate Sanitary Commission.—Section 205(g) is amended by adding at the end thereof the following new paragraph:

"(3) The Administrator shall reserve each fiscal year beginning after September 30, 1985, $900,000 from the sums available to the State of New York under this subsection for such fiscal year, $900,000 from the sums available to the State of New Jersey under this subsection for such fiscal year, and $200,000 from the sums available to the State of Connecticut under this subsection for such fiscal year. Sums reserved under this paragraph shall be used by the Administrator to make a grant for each such fiscal year to the Interstate Sanitation Commission established by such States by interstate compact to carry out the functions of such Commission under this Act.".

(e) Rural Set Aside.—

(1) Increase in mandatory set aside for rural states.—The first sentence of section 205(h) is amended by striking out "four per centum" and inserting in lieu thereof "a total (as determined by the Governor of the State) of not less than four percent nor more than seven and one-half percent".

(2) Increase in authorized set aside for other states.—The second sentence of section 205(h) is amended by striking out "four per centum" and inserting in lieu thereof "seven and one-half percent".

(f) Set Aside for Innovative and Alternative Processes and Techniques.—Section 205(i) is amended by striking out "and September 30, 1985," and inserting in lieu thereof "September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990,".

(g) Allocation of Planning Funds to Regional Organizations.—Section 205(j)(3) is amended by adding at the end thereof the following: "In giving such priority, the State shall allocate at least 50 percent of the amount granted to such State for a fiscal year under this subsection to regional and interstate public comprehensive planning organizations in such State, except in any *fiscal year for which the Administrator, after consultation with the Governor of such State and such organizations, determines that allocation of at least 50 percent to such organizations will not substantially assist in achieving the goals of this Act.".*

(h) Reservation of Funds for Investigations and Audits.—Section 205 is amended by adding at the end thereof the following new subsection:

"(l) Reservation for Investigations and Audits.—One-quarter of one percent of any amount appropriated under section 207 of this Act for any fiscal year beginning after September 30, 1985, shall be reserved by the Administrator for carrying out investigations and audits authorized by this Act of projects for which funds are made available under this title. Such sums shall be in addition to, and not in lieu of, any sums otherwise appropriated for or allocated to the Office of the Inspector General.".

SEC. 16. GRANTS TO STATES FOR ESTABLISHMENT OF WATER POLLUTION CONTROL REVOLVING FUNDS.

(a) In General.—Title II is amended by adding at the end thereof the following new section:

"SEC. 220. GRANTS TO STATES FOR ESTABLISHMENT OF REVOLVING FUNDS.

"(a) General Authority; Amount of Grant.—

"(1) General authority; construction assistance.—Subject to the provisions of this section, the Administrator shall make grants to each State for the purpose of establishing a revolving fund for providing assistance to municipalities and intermunicipal and interstate agencies for construction of treatment works (as defined in section 212 of this Act) which are publicly owned.

"(2) Amount of grant.—The amount of a grant to a State under this section for any fiscal year shall equal the amount allotted to such State under this section for such fiscal year.

"(b) General Grant Requirements.—

"(1) Deposits into revolving funds.—

"(A) Mandatory deposits.—A grant shall not be made for a fiscal year to a State under this section unless the State has first deposited in the revolving fund established by the State under this section from non-Federal sources an amount equal to 20 percent of the amount allotted to the State under this section for such fiscal year.

"(B) Discretionary deposits.—In addition to any amounts deposited in such revolving fund under subparagraph (A), the Governor of the State may deposit not to exceed 20 percent of the amount allotted to the State under section 205 of this Act for any fiscal year beginning after September 30, 1985, if the State has first deposited in such fund from non-Federal sources an amount equal to 20 percent of the amount to be deposited from such allotment.

"(2) Annual certification.—Each State shall submit to the Administrator annually a certification—

"(A) that upon completion of any project for treatments works for which financial assistance is made available from the revolving fund established by such State under this section, discharges from such treatment works will meet all applicable requirements necessary to achieve applicable State and Federal water quality standards; and

"(B) that such State will comply with all provisions of this section.

"(c) Forms of Revolving Fund Assistance.—Assistance described in subsection (a)(1) for construction of treatment works may only be provided from a revolving fund established under subsection (d)(1) in the form of a loan, loan guarantee, payment to reduce interest on a loan, bond interest subsidy, bond guarantee, or purchase of insurance for obligations. In addition, to the extent provided by State law, the State may issue revenue or general obligation bonds to finance projects for construction of treatment works described in subsection (a)(1) and on the State's priority list under section 216 using amounts in such fund as a source of revenue or security for the payment of interest and principal on such bonds, if the proceeds of the sale of such bonds are deposited in such fund.

"(d) State Water Pollution Control Revolving Funds.—

"(1) Establishment.—

"(A) Purposes.—Each State shall establish a Water Pollution Control Revolving Fund to provide assistance described in subsection (a)(1) for construction of treatment works.

"(B) State deposits.—The State shall deposit in such revolving fund any Federal funds allotted to the State under this section, any amounts received by the State for repayment of loans made by the State with amounts in such fund, any amounts required or authorized to be deposited in such fund under subsection (b)(1), and any additional funds (except for funds received under any other section of this title) which the State wishes to deposit in such fund.

"(2) Administrative expenses.—The State may use amounts in such revolving fund for the payment of expenses of administration of such fund; except that, in any fiscal year in which the State receives a grant under this section, the State may not use more than four percent of the amount of such grant for the payment of such expenses in such fiscal year.

"(3) Investments.—The State may invest any portion of the funds in such revolving fund which is not currently needed for providing assistance described in subsection (a)(1) and for payment of administrative expenses under paragraph (2).

"(4) Limitation to prevent double benefits.—If the State makes, from such revolving fund, a loan which will finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works, the State shall ensure that if the recipient of such loan receives a grant under section 201(g) of this Act for construction of such treatment works and an allowance under section 201(l)(1) for non-Federal funds expended for such planning and preparation, such recipient will promptly repay such loan to the extent of such allowance.

"(5) Eligibility of non-Federal portion of construction grant projects.—The State may provide assistance from such revolving fund to a municipality or intermunicipal or interstate agency with respect to the non-Federal share of the costs of a project for which such municipality or agency is receiving assistance from the Administrator under any other section of this title.

"(6) Dedicated source of revenue for loan repayment.—The State may only make a loan from such revolving fund to a municipality or intermunicipal or interstate agency if such municipality or agency first establishes a dedicated source of revenue for the repayment of such loan.

"(7) Priority list requirement.—The

State may provide financial assistance from such revolving fund only with respect to a project for construction of a treatment works described in subsection (a)(1) if such project is on the State's priority list under section 216 of this Act. Such assistance may be provided regardless of the rank of such project on such list.

"(e) Administrative Provisions.—

"(1) State reports.—Each State shall annually make a full and complete report to the Administrator concerning the use of funds deposited in the revolving fund established by such State under this section in such manner as the Administrator shall prescribe.

"(2) Annual audits.—The Administrator shall, at least on an annual basis, conduct or require each State to have independently conducted reviews and audits as may be deemed necessary or appropriate by the Administrator to carry out the objectives of this section. Audits of the use of funds deposited in the revolving fund established by such State shall be conducted in accordance with the auditing procedures of the General Accounting Office.

"(f) Applicability of Other Provisions.—Except to the extent provided in this section, the other provisions of this title shall not apply to grants under this section.

"(g) Authorization of Appropriations.—There is authorized to be appropriated to carry out this section not to exceed $600,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, not to exceed $2,400,000,000 for the fiscal year ending September 30, 1991, not to exceed $1,800,000,000 for the fiscal year ending September 30, 1992, not to exceed $1,200,000,000 for the fiscal year ending September 30, 1993, and not to exceed $600,000,000 for the fiscal year ending September 30, 1994.

"(h) Allotment of Funds.—

"(1) Same formula as construction grant allotment.—Sums authorized to be appropriated to carry out this section for any fiscal year shall be allotted by the Administrator in the same manner and in accordance with the same table as the funds which are authorized to be appropriated under section 207 of this Act are allotted for such fiscal year.

"(2) Exception.—For any fiscal year for which sums are authorized to be appropriated to carry out this section and for which sums are not authorized to be appropriated to carry out section 207, the sums authorized to be appropriated to carry out this section shall be allotted by the Administrator in the same manner and in accordance with the same table as the funds which were authorized to be appropriated under section 207 were allotted for the most recent fiscal year for which there was such an authorization under section 207.

"(3) Reallotment.—

"(A) Expiration of period of availability.—Sums allotted to a State under this subsection for a fiscal year shall remain available for a grant to such State for the fiscal year for which authorized and for the following two fiscal years. Any funds remaining after the last day of such third fiscal year shall be reallotted among the other States.

"(B) Unutilized funds.—Any funds granted to a State for a fiscal year under this section which are not utilized by such State for providing assistance described in subsection (a)(1) for construction of treatment works during such fiscal year and the following two fiscal years shall be repaid to the Administrator for reallotment among the other States.".

(b) Conforming Amendment.—Section 207 is amended by striking out "and 209," and inserting in lieu thereof the following: "209, and 220 (except as provided in section 220(b)(1)(B)),".

SEC. 17. INNOVATIVE TECHNOLOGY COMPLIANCE DEADLINES FOR DIRECT DISCHARGERS.

Section 301(k) is amended by striking out "July 1, 1987," and inserting in lieu thereof "two years after the date for compliance with such effluent limitation which would otherwise be applicable under such subsection,".

SEC. 18. VARIANCES FROM THE APPLICATION OF EFFLUENT LIMITATIONS.

(a) In General.—Section 301 is amended by adding at the end thereof the following new subsection:

"(n) Variances.—

"(1) Fundamentally different factors.—Upon application of any person who provides (or does not have a reasonable opportunity to provide) information to the Administrator in the rulemaking to establish or revise any effluent limitation under this section or section 304 of this Act, the Administrator may grant a variance from the application of such limitation with respect to the discharge of any pollutant by such person if the Administrator determines that factors relating to the facilities, equipment, and processes of such person are fundamentally different than the factors considered in such rulemaking.

"(2) Time limit for applications.—An application for a variance from the application of an effluent limitation under this subsection must be filed with the Administrator within 180 days after the date on which such limitation is established or revised, as the case may be.

"(3) Time limit for decision.—The Administrator, to the maximum extent practicable, shall approve or deny any application filed under this subsection within 180 days after the date such application is filed with the Administrator.

"(4) Limitation on applicability.—This subsection shall only apply with respect to effluent limitations established or revised after the date of the enactment of this subsection.

"(5) Effect of denial of application.—If an application for a variance from the application of an effluent limitation under this subsection is denied by the Administrator, the applicant must comply with such limitation as established or revised, as the case may be.".

(b) Savings Clause.—The amendment made by subsection (a) shall not affect any procedures or requirements in effect before the date of the enactment of this Act with respect to the granting of variances from the application of effluent limitations established or revised on or before such date of enactment.

SEC. 19. WATER QUALITY CRITERIA.

Section 304(a)(1) is amended by adding at the end thereof the following: "In developing, publishing, and revising criteria under this paragraph after the date of the enactment of this sentence, the Administrator shall consider, among other things, the effects on the ecosystem of (i) water hardness, (ii) pH, (iii) chemical and physical interactions, (iv) persistence of pollutants and the *long-term effects of pollutants, (v) sedimentation from chemical reaction of pollutants (vi) the absorptive properties of sediments, (vii) resuspension, and (viii) bio-uptake. New or revised criteria under this paragraph should be established so as to provide an ample margin of safety to protect human health and fish and wildlife resources. Whenever, in developing new or revised criteria under this paragraph with respect to a pollutant, the Administrator determines that a well-founded and significant difference of opinion exists as to the latest scientific and research knowledge on the matters referred to in the preceding sentence, the Administrator shall publish a description of such difference of opinion along with the publication of such criteria.".*

SEC. 20. TEST PROCEDURES.

Section 304(h) is amended by striking out ", within one hundred and eighty days from the date of enactment of this title," and inserting in lieu thereof ", within ninety days from the date of the enactment of the Water Quality Renewal Act of 1985,".

SEC. 21. PRETREATMENT STANDARDS.

(a) Extension of Standards by POTW Applying Innovative System.—Section 307 is amended by adding at the end the following:

"(e) Compliance Date Extension for Innovative Pretreatment Systems.—In the case of any new or existing facility that proposes to comply with the pretreatment standards of subsection (b) of this section by applying an innovative system that meets the requirements of section 301(k) of this Act, the owner or operator of the publicly owned treatment works receiving the treated effluent from such facility may extend the date for compliance with the applicable pretreatment standard established under this section for a period not to exceed two years—

"(1) if the Administrator determines that the innovative system has the potential for industrywide application, and

"(2) if the Administrator (or the State, in any case in which the State has a pretreatment program approved by the Administrator)—

"(A) determines that the proposed extension will not cause the publicly owned treatment works to be in violation of its permit under section 402, and

"(B) concurs with the proposed extension.".

(b) Increase in EPA Employees.—The Administrator shall take such actions as may be necessary to increase the number of employees of the Environmental Protection Agency in order to effectively implement pretreatment requirements under section 307 of the Federal Water Pollution Control Act.

SEC. 22. CRIMINAL PENALTIES.

Section 309(c) is amended to read as follows:

"(c) Criminal Penalties.—

"(1) Negligent violations.—Any person who—

"(A) negligently violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army, acting through the Chief of Engineers, or by a State; or

"(B) negligently introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage or which causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State;

shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment of not more than two years, or by both.

"(2) Knowing violations.—Any person who—

"(A) knowingly violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army, acting through the Chief of Engineers, or by a State; or

"(B) knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage or which causes such treatment works to violate any effluent limitation or condition in a permit issued to the treatment works under section 402 of this Act by the Administrator or a State;

shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $100,000 per day of violation, or by imprisonment of not more than four years, or by both.

"(3) Compliance as affirmative defense.—It shall be an affirmative defense under paragraphs (1)(B) and (2)(B) of this subsection that the introduction of any pollutant or hazardous substance into a sewer system or a publicly owned treatment works was in compliance with all applicable Federal, State, and local requirements which govern the introduction of a pollutant or hazardous substance into a sewer or publicly owned treatment works.

"(4) False statements.—Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than four years, or by both.

"(5) Responsible corporate officer as 'person'.—For the purpose of this subsection, the term 'person' means, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.

"(6) Hazardous substance defined.—For the purpose of this subsection, the term 'hazardous substance' means (A) any substance designated pursuant to section 311(b)(2)(A) of this Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of this Act, and (E) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.".

SEC. 23. CIVIL PENALTIES.

(a) Increase in Penalty.—Section 309(d) is amended by striking out "$10,000" and inserting in lieu thereof "$25,000".

(b) Increased Penalties Not Required Under States Programs.—The Federal Water Pollution Control Act shall not be construed as requiring a State to have a civil penalty for violations described in such section 309(d) which has the same monetary amount as the civil penalty established by such section, as amended by subsection (a) of this section.

SEC. 24. ADMINISTRATIVE PENALTIES.

(a) In General.—Section 309 is amended by adding at the end thereof the following:

"(g) Administrative Penalties.—

"(1) In general.—Whenever on the basis of any information available to him or her—

"(A) the Administrator finds that any person is in violation of section 301 (except as it relates to section 404 of this Act), 302, 306, 307, 318, or 405 of this Act, or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or

"(B) the Secretary of the Army, acting through the Chief of Engineers (hereinafter in this subsection referred to as the 'Secretary') finds that any person is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 404 of this Act by the Secretary or by a State,

the Administrator or Secretary, as the case may be, may, after consultation with the State in which the violation occurs, assess a civil penalty of not more than $10,000 per day of violation, except that such penalty shall not exceed a total of $125,000.

"(2) Administrative requirements.—

"(A) Notice and opportunity for hearing.—A civil penalty shall be assessed under this subsection by the Administrator or Secretary, as the case may be, by an order made on the record after opportunity (provided in accordance with this subparagraph) for a hearing in accordance with section 554 of title 5, United States Code. Before issuing such an order, the Administrator or Secretary, as the case may be, shall—

"(i) give written notice to the person to be assessed a civil penalty under such order of the Administrator's or Secretary's proposal to issue such order and provide such person an opportunity to request, within 15 days of the date the notice is received by such person, such a hearing on the order; and

"(ii) provide public notice of and reasonable opportunity to comment on any proposed assessment.

"(B) Notice to interested persons.—Any person who comments on a proposed assessment shall be given notice of any hearing held under subparagraph (A) and any order assessing a penalty under this subsection. In any such hearing, such person shall have a reasonable opportunity to present evidence.

"(C) Rights of interested persons to a hearing.—If no hearing is held before the issuance of an order assessing a penalty under this subsection, any person who commented on the proposed assessment may petition the Administrator or Secretary, as the case may be, to set aside such order and to provide a hearing on the penalty. The Administrator or Secretary shall set aside such order and provide such hearing in accordance with subparagraph (A) if the Administrator or Secretary determines that the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order. If the Administrator or Secretary denies a hearing under this subparagraph, the Administrator or Secretary shall provide to the petitioner, and publish in the Federal Register, notice of the reasons for such denial.

"(D) Factors to consider in determining amount of penalty.—In determining the amount of a civil penalty, the Administrator or Secretary, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, economic savings (if any) resulting from the violation, and such other matters as justice may require.

"(E) Compromise of amount.—The Administrator or Secretary, as the case may be, may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

"(F) Finality of order.—An order issued under this subsection shall become final 30 days after its issuance unless a petition for judicial review is filed under paragraph (3) or a hearing is requested under subparagraph (C). If such a hearing is denied, such order shall become final 30 days after such denial.

"(3) Right of interested person to appeal.—Any person who requested in accordance with paragraph (2)(A) or (2)(C) a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

"(4) Recovery of unpaid penalties by Attorney General.—If any person fails to pay an assessment of a civil penalty—

"(A) after the order making the assessment

has become a final order and if such person does not file a petition for judicial review of the order in accordance with paragraph (3), or

"(B) after a court in an action brought under paragraph (3) has entered a final judgment in favor of the Administrator or Secretary, as the case may be,

the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 30-day period referred to in paragraph (3) or the date of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

"(5) SUBPOENAS.—The Administrator or Secretary, as the case may be, shall have the authority to issue subpoenas in connection with hearings under paragraph (2) of this subsection and may request the Attorney General to bring an action to enforce any subpoena under this subsection. The district courts shall have jurisdiction to enforce such subpoenas and impose sanctions.

"(6) EFFECT ON AUTHORITY OF ADMINISTRATOR.—Action taken by the Administrator or Secretary, as the case may be, pursuant to this subsection shall not affect or limit the Administrator's or Secretary's authority to enforce any provision of this Act, except that any violation with respect to which a civil penalty is imposed under this subsection shall not be subject to a civil penalty under section 309(d) or section 311(b) of this Act.

"(7) EFFECT OF STATE ENFORCEMENT ACTION.—When a State has proceeded with an enforcement action relating to a violation with respect to which the Administrator or Secretary is authorized to assess a civil penalty under this subsection, the Administrator or Secretary, as the case may be, are not authorized to take any action under this subsection if the State demonstrates that the State imposed penalty is appropriate.

"(8) EFFECT OF ADMINISTRATOR'S ACTION ON COMPLIANCE.—No action by the Administrator under this subsection shall affect any person's obligation to comply with any section of this Act or with the terms and conditions of any permit issued pursuant to section 402 or 404 of this Act.".

(b) CITIZEN SUITS.—Section 505(b)(1) is amended by striking out the period at the end of subparagraph (B) and inserting ", or" and by adding at the end the following:

"(C) if the Administrator or State has commenced and is diligently pursuing the assessment of a civil penalty under section 309(g) of this Act.".

SEC. 28. CLEAN LAKES.

(a) APPLICATION OF PROGRAM TO SALINE LAKES.—Section 314(a)(1) is amended by striking out "fresh water".

(b) NONPOINT SOURCE GRANT PROGRAM; ANNUAL REPORT.—Section 314 is amended by adding at the end thereof the following new subsections:

"(d) PRIORITY PROJECTS FOR CONTROL OF NONPOINT SOURCES.—

"(1) GRANT PROGRAM.—The Administrator shall make grants to States for priority projects for control of nonpoint sources of pollution which are contributing to the degradation of water quality in lakes. The Administrator shall provide an equitable distribution of such sums to the States.

"(2) FEDERAL SHARE.—The amount granted to a State for a project under this subsection shall not exceed 70 per centum of the cost of such project.

"(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection not to exceed $50,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990. Sums appropriated shall remain available until expended.

"(e) ANNUAL WATER QUALITY REPORT.—The Administrator shall submit annually to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the status and trend of water quality in lakes in the United States, including but not limited to, the nature and extent of pollution loading from point and nonpoint sources and the extent to which the use of lakes is impaired as a result of such pollution, particularly with respect to toxic pollution.".

(c) CONFORMING AMENDMENTS.—Section 314 is amended—

(1) in subsection (b), by striking out "this section" the first place it appears and inserting in lieu thereof "subsection (a) of this section";

(2) in subsection (c)(1), by striking out "this section" the first place it appears and inserting in lieu thereof "subsection (b) of this section" and by striking out "this section" the second place it appears and inserting in lieu thereof "subsection (a) of this section"; and

(3) in subsection (c)(2), by striking out "this section" the first place it appears and inserting in lieu thereof "subsection (b) of this section" and by striking out "this section" the second place it appears and inserting in lieu thereof "subsection (a) of this section".

(d) CLEAN LAKES PROJECTS.—

(1) LAKE HOUSTON, TEXAS.—

(A) STUDY; CONTROL MEASURES.—The Administrator shall, in cooperation with the State of Texas, study water quality problems in Lake Houston, Houston, Texas, and undertake such control measures as the Administrator and State determine are necessary to improve water quality. Such study shall include, but not be limited to, the evaluation of the feasibility of regional or consolidated waste treatment facilities and the development of recommendations for the cost-effective control of pollutants entering the Lake Houston watershed.

(B) REPORT.—The Administrator shall submit a report on the results of such study and identify such structural or nonstructural controls which were undertaken or are proposed, along with recommendations for further measures, to improve the water quality of Lake Houston, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than one year after the date of the enactment of this Act.

(C) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal years beginning after September 30, 1985, $10,000,000 to carry out this paragraph, to remain available until expended.

(2) BEAVER LAKE, ARKANSAS.—

(A) STUDY.—The Administrator, in cooperation with the Secretary of the Army, acting through the Chief of Engineers, and

in consultation with appropriate State and local agencies, shall conduct a one-year comprehensive study of the Beaver Lake, Arkansas, to identify measures which will optimize achievement of the purposes for which Beaver Dam was constructed while preserving and enhancing the quality of the reservoir's water.

(B) DEMONSTRATION PROJECT.—Upon completion of the study, the Administrator shall undertake a demonstration project at Beaver Lake to determine the effectiveness of measures identified in such study for preserving and enhancing the quality of the reservoir's water for current and future users.

(C) REPORT.—Upon completion of the demonstration project, the Administrator shall submit a report of such study and project, along with recommendations for further measures to improve the water quality of Beaver Lake, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(D) AVAILABILITY OF FUNDS.—Funds appropriated under subsections (c) and (d) of section 314 of the Federal Water Pollution Control Act shall be available to carry out this paragraph.

(3) GREENWOOD LAKE AND BELCHER CREEK, NEW JERSEY.—

(A) DEMONSTRATION PROJECT.—The Administrator shall undertake a demonstration project for the removal of silt, stumps, and other obstructions from Greenwood Lake and Belcher Creek, New Jersey.

(B) REPORT.—Upon completion of the demonstration project, the Administrator shall submit a report on such project, along with recommendations for further measures to improve the water quality of Greenwood Lake and Belcher Creek, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(C) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $10,000,000 to carry out this paragraph.

(4) DEAL LAKE, NEW JERSEY.—

(A) DEMONSTRATION PROJECT.—The Administrator shall undertake a demonstration project for the removal of silt and stumps from, and the control of pollution from nonpoint sources in, Deal Lake, Monmouth County, New Jersey.

(B) REPORT.—Upon completion of the demonstration project, the Administrator shall submit a report on such project, along with recommendations for further measures to improve the water quality of Deal Lake, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(C) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $8,000,000 to carry out this paragraph.

(5) ALCYON LAKE, NEW JERSEY.—

(A) DEMONSTRATION PROJECT.—The Administrator shall undertake a demonstration project for the restoration of Alcyon Lake, New Jersey, including removal and disposal of contaminated sediments in the lake.

(B) REPORT.—Upon completion of the demonstration project, the Administrator shall submit a report on such project, along with recommendations of further measures to improve the water quality of Alcyon Lake, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(C) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $3,500,000 to carry out this paragraph.

(6) SAUK LAKE, MINNESOTA.—

(A) DEMONSTRATION PROJECT.—The Administrator shall undertake a demonstration project for the removal of silt and aquatic growth from Sauk Lake and its tributary streams in the vicinity of Sauk Centre, Stearns County, Minnesota.

(B) REPORT.—Upon completion of the demonstration project, the Administrator shall submit a report on such project, along with recommendations of further measures to improve the water quality of Sauk Lake, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(C) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $2,000,000 to carry out this paragraph.

(7) LAKE WORTH, TEXAS.—

(A) DEMONSTRATION PROJECT.—The Administrator shall undertake a demonstration project to remove silt and aquatic growth from Lake Worth, Tarrant County, Texas, including constructing silt traps and providing other devices or equipment to prevent and abate the further deposit of sediment in Lake Worth. Such project shall also provide for the use of dredged material in the reclamation of despoiled land. The Administrator may take such other actions as may be necessary to carry out such project.

(B) REPORT.—Upon completion of the demonstration project, the Administrator shall submit a report on such project, along with recommendations of further measures to improve the water quality of Lake Worth, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(C) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $1,750,000 to carry out this paragraph.

SEC. 26. NPDES PERMITS.

(a) PERMIT REQUIREMENTS.—

(1) TERMS.—Section 402(b)(1)(B) is amended to read as follows:

"(B) are for fixed terms not exceeding five years, or for a fixed term not exceeding ten years in any case in which the State determines (in accordance with guidelines established by the Administrator) that the applicant has consistently complied with any permit held by such applicant under this section and that—

"(i) pollutants described in subparagraphs (C), (D), and (F) of section 301(b)(2) are not detectable in the effluent to which the permit will apply; or

"(ii) such pollutants are present in such effluent only in trace amounts and are neither causing nor are likely to cause toxic effects, alone or in combination with pollutants from other sources;".

(2) COMPLIANCE WITH NEW TOXIC LIMITATIONS AND WATER QUALITY STANDARDS.—Section 402(b)(1) is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following:

"(D) in the case of any permit issued for a fixed term exceeding five years, must be modified promptly to ensure compliance with any new or revised effluent limitation under section 307(a) of this Act or any new or revised requirement pursuant to a standard under section 303 of this Act which limitation or requirement is more stringent than

the existing effluent limitation or requirement in the permit or which controls a pollutant not controlled in the permit; and".

(b) Exemption From Permit of Certain Stormwater Runoff.—Section 402(l) is amended by inserting "(1)" after "(l)" and by adding at the end thereof the following new paragraph:

"(2) The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require such a permit, for discharges of stormwater runoff from mining operations or oil or gas exploration, production, processing, or treatment operations, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated with process wastes, overburden, raw materials, toxic pollutants above natural background levels, spilled product, hazardous substances, or oil or grease. Any person discharging stormwater runoff described in the preceding sentence shall monitor the quality of water in such flows and shall report not less often than annually to the Administrator on the results of such monitoring.".

(c) Additional Pretreatment of Conventional Pollutants Not Required.—Section 402 is amended by adding at the end thereof the following new subsection:

"(m) Additional Pretreatment of Conventional Pollutants Not Required.—To the extent a treatment works (as defined in section 212 of this Act) which is publicly owned is not meeting the requirements of a permit issued under this section for such treatment works as a result of inadequate design or operation of such treatment works, the Administrator, in issuing a permit under this section, shall not require pretreatment by a person introducing conventional pollutants identified pursuant to section 304(a)(4) of this Act into such treatment works other than pretreatment required to assure compliance with pretreatment standards under subsection (b)(8) of this section and section 307(b)(1) of this Act. Nothing in this subsection shall affect the Administrator's authority under sections 307 and 309 of this Act, affect State and local authority under sections 307(b)(4) and 510 of this Act, relieve such treatment works of its obligations to meet requirements established under this Act, or otherwise preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.".

(d) Partial Permit Program.—Section 402 is amended by adding at the end the following:

"(n) Partial Permit Program.—

"(1) State submission.—The Governor of a State may submit under subsection (b) of this section a permit program for a portion of the discharges into the navigable waters in such State.

"(2) Minimum coverage.—A partial permit program under this subsection shall cover at a minimum administration of a major category of the discharges into the navigable waters of the State or a major component of the permit program required by subsection (b).

"(3) Approval of partial permit program.—The Administrator may approve a partial permit program covering administration of a major category of discharges under this subsection if—

"(A) such program represents a complete permit program and covers all of the discharges under the jurisdiction of a department or agency of the State; and

"(B) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b).

"(4) Approval of partial and phased permit program.—The Administrator may approve under this subsection a partial and phased permit program covering administration of a major component (including discharge categories) of a State permit program required by subsection (b) if—

"(A) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b); and

"(B) the State submits, and the Administrator approves, a plan for the State to assume administration by phases of the remainder of the State program required by subsection (b) by a specified date not more than five years after submission of the partial program under this subsection and agrees to make all reasonable efforts to assume such administration by such date.".

(e) Return of State Permit Program to Administrator.—

(1) In general.—Section 402(c) is amended by adding at the end thereof the following new paragraph:

"(4) A State may return administration of its permit program to the Administrator, and the Administrator may withdraw approval of a State permit program under paragraph (3) of this subsection—

"(A) in the case of any approval under subsection (n)(3), the entire permit program being administered by the State department or agency at the time of such return or withdrawal, as the case may be; or

"(B) in the case of any approval under subsection (n)(4), any phased component of the permit program approved at the time of such return or withdrawal, as the case may be.".

(2) Technical amendment.—Section 402(c)(1) is amended by striking out "as to those navigable waters" and inserting in lieu thereof "as to those discharges".

SEC. 27. AUDITS.

Section 501(d) is amended by inserting at the end thereof the following new sentences: "For the purpose of carrying out audits and examinations with respect to recipients of Federal assistance under this Act, the Administrator is authorized to enter into noncompetitive procurement contracts with State audit organizations. Such contracts may only be entered into to the extent and in such amounts as may be provided in advance in appropriation Acts.".

SEC. 28. COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.

(a) Defined as a State.—Section 502(3) is amended by inserting "the Commonwealth of the Northern Mariana Islands," after "Samoa,".

(b) Defined as Part of United States.—Section 311(a)(5) is amended by striking out "the Canal Zone," and inserting in lieu thereof "the Commonwealth of the Northern Mariana Islands,".

SEC. 29. AGRICULTURAL STORMWATER DISCHARGES.

Section 502(14) (relating to the definition of point source) is amended by inserting after "does not include" the following: "agricultural stormwater discharges and".

SEC. 30. REPORTS TO CONGRESS.

Section 516 is amended by adding at the end thereof the following new subsections:

"(f) DAM DISCHARGE STUDY.—The Administrator, in cooperation with interested States and Federal agencies, shall study and monitor the effects on the quality of navigable waters attributable to the impoundment and discharge of water by dams. The results of such study, together with any recommendations for the control of such impoundment and discharge, shall be submitted to Congress not later than December 31, 1986.

"(g) STATE REVOLVING FUND REPORT.—

"(1) IN GENERAL.—Not later than February 10, 1990, the Administrator shall submit to Congress a report on the financial status and operations of Water Pollution Control Revolving Funds established by the States under section 220 of this Act. The Administrator shall prepare such report in cooperation with the States, including water pollution control agencies and other water pollution control planning and financing agencies.

"(2) CONTENTS.—The report under this subsection shall also include the following:

"(A) an inventory of the facilities that are in significant noncompliance with the enforceable requirements of this Act;

"(B) an estimate of the cost of construction necessary to bring such facilities into compliance with such requirements;

"(C) an assessment of the availability of sources of funds for financing such needed constructon, including an estimate of the amount of funds available for providing assistance for such construction through September 30, 1999, from the Water Pollution Control Revolving Funds established by the States under section 220 of this Act;

"(D) an assessment of the operations, loan portfolio, and loan conditions of such Funds;

"(E) an assessment of the effect on user charges of the assistance provided by such Funds compared to the assistance provided with funds appropriated pursuant to section 207 of this Act; and

"(F) an assessment of the efficiency of the operation and maintenance of treatment works constructed with assistance provided by such Funds compared to the efficiency of the operation and maintenance of treatment works constructed with assistance provided under section 201 of this Act.".

SEC. 31. NEWTOWN CREEK, NEW YORK.

(a) MODIFICATIONS TO TREATMENT PLANT.—The Administrator is authorized to make a grant to the city of New York to install such additional facilities in, and make such modifications to, the Newtown Creek sewage treatment plant as are necessary for the plant to provide secondary treatment. The Federal share of such project shall be 75 percent of the cost of installing such facilities and making such modifications.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to carry out this section for fiscal years beginning after September 30, 1985. Such sums shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.

SEC. 32. SAN DIEGO, CALIFORNIA.

(a) PURPOSE.—The purpose of this section is to protect the economy, public health, environment, surface water and public beaches, and water quality of the city of San Diego, California, and surrounding areas, which are endangered and are being polluted by raw sewage emanating from the city of Tijuana, Mexico.

(b) CONSTRUCTION GRANTS.—Upon approval of the necessary plans and specifications, the Administrator is authorized to make grants to the Secretary of the Army, acting through the Chief of Engineers (hereinafter in this section referred to as the Secretary), or any other Federal agency or any other appropriate commission or entity designated by the President. Such grants shall be for construction of a project consisting of—

(1) treatment works in the city of San Diego, California, to provide primary or more advanced treatment of municipal sewage and industrial waste from the city of Tijuana, Mexico; and

(2) a publicly owned treatment works in such city to provide primary or more advanced treatment of such amount of municipal sewage and industrial waste for such city of San Diego as may be necessary to meet the objectives of the Federal Water Pollution Control Act.

(c) INTERIM MEASURES.—As an interim measure, the Administrator shall make grants to the Secretary or such other agency, commission, or entity as may be designated under subsection (b) for the construction of defensive treatment works to protect residents of the city of San Diego and surrounding areas from pollution resulting from any inadequacies or breakdowns in wastewater treatment works and systems in Mexico. The Secretary or such agency, commission, or entity is authorized to construct, operate, and maintain such defensive treatment works in order to accomplish the purposes of this section.

(d) APPROVAL OF PLANS.—Any treatment works for which a grant is made under this section shall be constructed in accordance with plans developed by the Secretary or such agency, commission, or entity, in consultation with the city of San Diego, and approved by the Administrator to meet the construction standards which would be applicable if such treatment works were being constructed under section 201 of the Federal Water Pollution Control Act.

(e) CAPACITY OF PROJECT.—The project authorized by this section shall provide capacity to provide treatment of municipal sewage and industrial waste for the cities of Tijuana and San Diego.

(f) APPLICABILITY OF ACT.—All provisions of the Federal Water Pollution Control Act which are applicable to a grant made to a State, municipality, or intermunicipal or interstate agency under section 201(g) of such Act shall apply to a grant made to an agency, commission, or entity for construction of treatment works under subsection (b)(2) of this section, except that the non-Federal share of the costs of such construction shall be paid by the city of San Diego and other non-Federal interests.

(g) FEDERAL SHARE.—Construction of the treatment works under subsections (b)(1) and (c) of this section with respect to municipal sewage and industrial waste from the city of Tijuana shall be at full Federal expense less any costs paid by the Government of Mexico as a result of agreements negotiated with the United States.

(h) OCEAN OUTFALL PERMIT.—Upon application of the city of San Diego, the Administrator may issue a permit under section 402 of the Federal Water Pollution Control Act which modifies the requirements of section 301(b)(1)(B) of such Act to permit the discharge of pollutants for any ocean outfall constructed with Federal assistance under this Act if such pollutants have received primary or more advanced treatment. Any *permit issued pursuant to this subsection shall not be effective after December 31, 1992.*

(i) Extra Capacity.—If the treatment works constructed under this section to provide treatment for municipal sewage and industrial waste from the city of Tijuana has capacity which is no longer necessary to provide such treatment, such capacity may be used to provide treatment for municipal sewage and industrial waste for the city of San Diego.

(j) Definitions.—For purposes of this section, the terms "construction" and "treatment works" have the meanings such terms have under section 212 of the Federal Water Pollution Control Act.

(k) Authorization of Appropriations.—There is authorized to be appropriated for fiscal years beginning after September 30, 1985, such sums as may be necessary to the Administrator to make grants under this section and such sums as may be necessary to the Secretary, or such other agency, commission, or entity as the President may designate under subsection (b), to carry out this section.

SEC. 33. NACO, ARIZONA.

(a) Purpose.—The purpose of this section is to protect the economy, public health, environment, and surface water and groundwater of the community of Naco, Arizona, which are endangered and are being polluted by raw sewage emanating from the city of Naco, Sonora, Mexico.

(b) Construction Grants.—Upon application of the county of Cochise, Arizona, the Administrator shall make grants to such county for construction of a project consisting of—

(1) a publicly owned treatment works in such community of Naco, Arizona, to provide primary or more advanced treatment of not less than 150,000 gallons of untreated sewage emanating from the city of Naco, Sonora, Mexico; and

(2) a publicly owned treatment works in such community of Naco, Arizona, to provide primary or more advanced treatment of such amount of municipal sewage and industrial waste per day for such community of Naco, Arizona, as may be necessary to meet the objectives of the Federal Water Pollution Control Act.

(c) Approval of Plans.—Any treatment works for which a grant is made under this section shall be constructed in accordance with plans developed by the county of Cochise, Arizona, and approved by the Administrator to meet the construction standards which would be applicable if such treatment works were being constructed under section 201 of the Federal Water Pollution Control Act.

(d) Capacity of Project.—The project authorized by this section shall provide capacity to provide treatment of municipal sewage and industrial waste for the city of Naco, Sonora, Mexico and the community of Naco, Arizona.

(e) Applicability of Act.—All provisions of the Federal Water Pollution Control Act which are applicable to grants made under section 201(g) of such Act shall apply to grants made under this section to provide treatment of municipal sewage and industrial waste for the community of Naco, Arizona.

(f) Federal Share.—The Federal share of the cost of construction of the treatment works to provide treatment of municipal sewage and industrial waste for the city of Naco, Sonora, Mexico, shall be at full Federal expense less any costs paid by the Government of Mexico as a result of agreements negotiated with the United States.

(g) Extra Capacity.—If the treatment works constructed under this section to provide treatment for municipal sewage and industrial waste for the city of Naco, Sonora, Mexico, has capacity which is no longer necessary to provide such treatment, such capacity may be used to provide treatment for municipal sewage and industrial waste for the community of Naco, Arizona.

(h) Definitions.—For purposes of this section, the terms "construction" and "treatment works" have the meanings such terms have under section 212 of the Federal Water Pollution Control Act.

(i) Authorization of Appropriations.—There is authorized to be appropriated to the Administrator $2,000,000 to make grants under this section for fiscal years beginning after September 30, 1985.

SEC. 34. LIMITATION ON DISCHARGE OF RAW SEWAGE BY NEW YORK CITY.

(a) In General.—

(1) North river plant.—If the wastewater treatment plant identified in the consent decree as the North River plant has not achieved advanced preliminary treatment as required under the terms of the consent decree by August 1, 1986, the city of New York shall not discharge raw sewage from the drainage area of such plant (as defined in the consent decree) into navigable waters after such date in an amount which is greater for any 30-day period than an amount equal to 30 times the average daily amount of raw sewage discharged from such drainage area during the 12-month period ending on the earlier of the date on which such plant becomes operational or March 15, 1986 (as determined by the Administrator), except as provided in subsection (b).

(2) Red hook plant.—If the wastewater treatment plant identified in the consent decree as the Red Hook plant has not achieved advanced preliminary treatment as required under the terms of the consent decree by August 1, 1987, the city of New York shall not discharge raw sewage from the drainage area of such plant (as defined in the consent decree) into navigable waters after such date in an amount which is greater for any 30-day period than an amount equal to 30 times the average daily amount of raw sewage discharged from such drainage area during the 12-month period ending on the earlier of the date on which such plant becomes operational or March 15, 1987 (as determined by the Administrator), except as provided in subsection (b).

(b) Waivers.—

(1) Interruption of plant operation.—In the event of any significant interruption in the operation of the North River plant or the Red Hook plant caused by an event described in subparagraph (A), (B), or (C) of paragraph (5) occurring after the applicable deadline established under subsection (a), the Administrator shall waive the limitation of subsection (a) with respect to such plant, but only to such extent and for such limited period of time as may be reasonably necessary for the city of New York to resume operation of such plant.

(2) Increased precipitation.—In the event that the volume of precipitation occurring after the applicable deadline established under subsection (a) causes the discharge of raw sewage to exceed the limitation under subsection (a), the Administrator shall waive the limitation of subsection (a) with

respect to either or both such plants, but only to such extent and for such limited period of time as the Administrator determines to be necessary to take into account the increased discharge caused by such volume of precipitation.

(3) Variations in certain North River drainage area discharges.—In the event that an increase in discharges from the North River drainage area constituting a violation of subsection (a)(1) is due to a random or seasonal variation, and that any sewer hookup occurring, or permit for a sewer hookup granted, after July 31, 1986, is not responsible for such violation, the Administrator shall waive the limitation of subsection (a)(1), but only to such extent and for such limited period of time as the Administrator determines to be reasonably necessary to take into account such random or seasonal variation.

(4) Variations in certain Red Hook drainage area discharges.—In the event that an increase in discharges from the Red Hook drainage area constituting a violation of subsection (a)(2) is due to a random or seasonal variation, and that any sewer hookup occurring, or permit for a sewer hookup granted, after July 31, 1987, is not responsible for such violation, the Administrator shall waive the limitation of subsection (a)(2), but only to such extent and for such limited period of time as the Administrator determines to be reasonably necessary to take into account such random or seasonal variation.

(5) Circumstances beyond city's control.—The Administrator shall extend either deadline under paragraph (1) or (2) of subsection (a) to such extent and for such limited period of time as may be reasonably required to take into account any—

(A) act of war,

(B) unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight, or

(C) other circumstances beyond the control of the city of New York, except such circumstances shall not include (i) the unavailability of Federal funds under section 201 of the Federal Water Pollution Control Act, (ii) the unavailability of funds from the city of New York or the State of New York, or (iii) a policy decision made by the city of New York or the State of New York to delay the achievement of advanced preliminary treatment at the North River plant or Red Hook plant beyond the applicable deadline set forth in subsection (a).

(c) Penalties.—Except as otherwise provided in subsection (b), any violation of subsection (a) shall be considered to be a violation of section 301 of the Federal Water Pollution Control Act, and all provisions of such Act relating to violations of such section 301 shall apply.

(d) Consent Decree Defined.—For purposes of this section, the term "consent decree" means the consent decree entered into by the Environmental Protection Agency, the city of New York, and the State of New York, on December 30, 1982, relating to construction and operation of the North River and Red Hook wastewater treatment plants.

(e) Cooperation.—The Administrator shall work with the city of New York to eliminate the discharge of raw sewage by such city at the earliest practicable date.

(f) Savings Clause.—Nothing in this section shall be construed as modifying the terms of the consent decree.

(g) Sense of Congress.—It is the sense of Congress that the Administrator should not agree to any further modification of the consent decree with respect to the schedule for achieving advanced preliminary treatment.

(h) Termination Dates.—

(1) North river plant.—The provisions of this section shall remain in effect with respect to the North River drainage area until such time as the North River plant has achieved advanced preliminary treatment (as defined in the consent decree) for a period of six consecutive months.

(2) Red hook plant.—The provisions of this section shall remain in effect with respect to the Red Hook drainage area until such time as the Red Hook plant has achieved advanced preliminary treatment (as defined in the consent decree) for a period of six consecutive months.

(i) Monitoring Activities.—The Administrator shall establish and carry out a program within available funds to implement the monitoring activities which may be required under subsection (a) by December 1, 1984.

(j) Establishment of Methodologies.—The Administrator shall establish the methodologies, data base, and any other information required for making determinations under subsection (b)—

(1) for the North River drainage area (as defined in the consent decree) by July 31, 1986, unless the requirements of subsection (h)(1) have been satisfied, and

(2) for the Red Hook drainage area (as defined by the consent decree) by July 31, 1987, unless the requirements of subsection (h)(2) have been satisfied.

(k) Violations.—In carrying out this section, if the Administrator finds that a violation of subsection (a) has occurred, the Administrator shall also determine, within 30 days after such finding, whether a provision of subsection (b) applies. If the Administrator requires information from the city of New York in order to determine whether a provision of subsection (b) applies, the Administrator shall request such information. If the city of New York does not supply the information requested by the Administrator, the Administrator shall determine that subsection (b) does not apply. The city of New York shall be responsible only for such expenses as are necessary to provide such requested information. Enforcement action pursuant to subsection (c) shall be commenced at the end of such 30 days unless a provision of subsection (b) applies.

SEC. 35. DEER ISLAND TREATMENT PLANT, MASSACHUSETTS.

(a) Emergency Improvements.—The Administrator is authorized and directed to make grants to the Metropolitan District Commission, Massachusetts, for a project to undertake emergency improvements at the Deer Island Waste Water Treatment Plant in Boston, Massachusetts. The Federal share of such project shall not exceed 75 percent of the cost of carrying out such improvements.

(b) Authorization of Appropriations.—There is authorized to be appropriated to carry out this section $10,000,000 per fiscal year for each of the fiscal years 1986, 1987, and 1988.

SEC. 36. OAKWOOD BEACH AND RED HOOK PROJECTS, NEW YORK.

(a) Relocation of Natural Gas Facilities.—Notwithstanding any provision of the Federal Water Pollution Control Act, the Ad-

ministrator shall pay, to the extent provided in appropriation Acts, in the same proportion as the Federal share of other project costs, all expenses for the relocation of facilities for the distribution of natural gas with respect to the entire wastewater treatment works known as the Oakwood Beach (EPA Grant Numbered 360392) and Red Hook (EPA Grant Numbered 360394) projects, New York.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal years beginning after September 30, 1985, not to exceed $9,000,000 to carry out this section.

SEC. 37. CHIPPEWA TOWNSHIP, PENNSYLVANIA.

In order to protect the public health, environment, and water quality endangered by the destruction of the Chippewa Township, Pennsylvania, sewage treatment facility and the resultant raw sewage discharge into Brady's Run and the Beaver River, Pennsylvania, the Administrator is directed to remove such raw sewage.

SEC. 38. DES MOINES, IOWA.

(a) AUTHORITY TO MAKE GRANTS.—The Administrator is authorized to make a grant to the city of Des Moines, Iowa, for construction of the Central Sewage Treatment Plant component of the Des Moines, Iowa, metropolitan area project. The Federal share of such project shall be 75 percent of the cost of construction.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section not to exceed $85,000,000 for fiscal years beginning after September 30, 1985. Such sums shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.

SEC. 39. WASTEWATER RECLAMATION DEMONSTRATION.

(a) AUTHORITY TO MAKE GRANTS.—The Administrator is authorized to make a grant to the San Diego Water Reclamation Agency, California, to demonstrate and field test for public use innovative processes which advance the technology of wastewater reclamation and which promote the use of reclaimed wastewater.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated not to exceed $3,000,000 to carry out this section for fiscal years beginning after September 30, 1985.

SEC. 40. BOSTON HARBOR AND ADJACENT WATERS.

(a) GRANTS.—The Administrator shall make grants to the Massachusetts Water Resource Authority for purposes of—

(1) assessing the principal factors having an adverse effect on the environmental quality of Boston Harbor and its adjacent waters;

(2) developing and implementing a management program to improve the water quality of such Harbor and waters; and

(3) constructing necessary waste water treatment works for providing secondary treatment for the areas served by such authority.

(b) FEDERAL SHARE.—The Federal share of projects described in subsection (a) shall not exceed 75 percent of the cost of construction thereof.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $20,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990. Such sums shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.

SEC. 41. TREATMENT WORKS IN WASHINGTON STATE.

(a) AUTHORITY TO MAKE GRANTS.—The Administrator is authorized to make grants to the sewage treatment authorities discharging into Puget Sound and adjacent marine waters, including the Strait of Juan de Fuca and Bellingham Bay, to construct necessary treatment works for providing secondary treatment for the areas served by such authorities. The Federal share of such projects shall not exceed 75 percent of the cost of construction thereof.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $250,000,000 to carry out this section for fiscal years beginning after September 30, 1985. Such sums shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the the Federal Water Pollution Control Act.

SEC. 42. IMPROVEMENT PROJECTS.

(a) AVALON, CALIFORNIA.—The Administrator shall make a grant of $3,000,000 from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of California for fiscal year 1986 to the city of Avalon, California, for improvements to the publicly owned treatment works of such city.

(b) WALKER AND SMITHFIELD TOWNSHIPS, PENNSYLVANIA.—The Administrator shall make grants from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of Pennsylvania for fiscal year 1986—

(1) to Walker Township, Pennsylvania, for developing a collector system and connecting its wastewater treatment system into the Huntingdon Borough, Pennsylvania, sewage treatment plant, and

(2) to Smithfield Township, Pennsylvania, for rehabilitating and extending its collector system.

(c) TAYLOR MILL, KENTUCKY.—Notwithstanding section 201(g)(1) of the Federal Water Pollution Control Act or any other provision of law, the Administrator shall make a grant of $250,000 from funds allotted under section 205 of such Act to the State of Kentucky for fiscal year 1986 to the city of Taylor Mill, Kentucky, for the repair and reconstruction, as necessary, of the publicly owned treatment works of such city.

(d) WATSONVILLE, CALIFORNIA.—The Administrator shall make a grant of $27,000,000 from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of California for fiscal years beginning after September 30, 1985, to the city of Watsonville, California, for improvements to the wastewater treatment and disposal facilities of such city.

SEC. 43. STUDY OF REGULATION OF DE MINIMIS DISCHARGES.

(a) STUDY.—The Administrator shall study the feasibility and desirability of eliminating the regulation of discharges of pollutants into the navigable waters in amounts which, in terms of volume, concentration, and type of pollutant, are not significant.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Administrator shall submit a report on the results of such study along with recommendations to the Committee on Public Works and Transportation of the House of Representa-

tives and the Committee on Environment and Public Works of the Senate.

SEC. 44. STUDY OF EFFECTIVENESS OF INNOVATIVE AND ALTERNATIVE PROCESSES AND TECHNIQUES.

(a) Effectiveness Study.—The Administrator shall study the effectiveness on waste treatment of innovative and alternative wastewater treatment processes and techniques referred to in section 201(g)(5) of the Federal Water Pollution Control Act which have been utilized in treatment works constructed under such Act. In conducting such study, the Administrator shall compile information, by State, on the types of such processes and techniques utilized, on the number of facilities constructed with such processes and techniques, and a description of such processes and techniques which have not performed to design standards. The Administrator shall also determine which States have not obligated the full amount set aside under section 205(i) of such Act for such processes and techniques and the reasons for each such State's failure to make such obligations.

(b) Report.—Not later than two years after the date of the enactment of this Act, the Administrator shall submit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of such study, along with recommendations for providing more effective incentives for innovative and alternative wastewater treatment processes and techniques.

SEC. 45. WATER QUALITY IMPROVEMENT STUDY.

(a) Study.—The Administrator shall study the water quality improvements which have been achieved by application of best available technology economically achievable pursuant to section 301(b)(2) of the Federal Water Pollution Control Act. Such study shall include, but not be limited to, an analysis of the effectiveness of, and the costs and benefits associated with, application of best available technology economically achievable pursuant to such section and an analysis of the effectiveness of the water quality program under such Act and methods of improving such program, including site specific levels of treatment which will achieve the water quality goals of such Act in a cost-effective manner.

(b) Report.—Not later than two years after the date of the enactment of this Act, the Administrator shall submit a report on the results of the study conducted under subsection (a) together with recommendations for improving the water quality program and its effectiveness to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

SEC. 46. STUDY OF TESTING PROCEDURES.

(a) Study.—The Administrator shall study the testing procedures for analysis of pollutants established under section 304(h) of the Federal Water Pollution Control Act. Such study shall include, but not be limited to, an analysis of the adequacy and standardization of such procedures. In conducting the analysis of the standardization of such procedures, the Administrator shall consider the extent to which such procedures are consistent with comparable procedures established under other Federal laws.

(b) Report.—Not later than one year after the date of the enactment of this Act, the Administrator shall submit a report on the results of the study conducted under this subsection, together with recommendations for modifying the test procedures referred to in subsection (a) to improve their effectiveness, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(c) Biennial Reviews.—Biennially after the date of submission of the report under subsection (b), the Administrator shall conduct a state-of-the-art review of the test procedures for the analysis of pollutants referred to in subsection (a) for the purpose of determining the adequacy and effectiveness of such procedures and shall, based on the results of such review, submit to the committees referred to in subsection (b) recommendations for modifying such procedures to improve their effectiveness.

SEC. 47. STUDY OF PRETREATMENT OF TOXIC POLLUTANTS.

(a) Study.—The Administrator shall study—

(1) the adequacy of data on environmental impacts of toxic industrial pollutants discharged from publicly owned treatment works;

(2) the extent to which secondary treatment at publicly owned treatment works removes toxic pollutants;

(3) the capability of publicly owned treatment works to revise pretreatment requirements under section 307(b)(1) of the Federal Water Pollution Control Act;

(4) possible alternative regulatory strategies for protecting the operations of publicly owned treatment works from industrial discharges, and shall evaluate the extent to which each such strategy identified may be expected to achieve the goals of this Act; and

(5) the adequacy of Federal, State, and local resources to establish, implement, and enforce multiple pretreatment limits for toxic pollutants for each such alternative strategy.

(b) Report.—Not later than two years after the date of the enactment of this Act, the Administrator shall submit a report on the results of such study along with recommendations for improving the effectiveness of pretreatment requirements to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

SEC. 48. SULFIDE CORROSION STUDY.

(a) Study.—The Administrator shall conduct a study of the corrosive effects of sulfides in collection and treatment systems, the extent to which the uniform imposition of categorical pretreatment standards will exacerbate such effects, and the range of available options to deal with such effects.

(b) Consultation.—The study required by this section shall be conducted in consultation with the Los Angeles City and County sanitation agencies.

(c) Report.—Not later than one year of the date of the enactment of this Act, the Administrator shall submit a report on the results of the study, together with recommendations for measures to reduce the corrosion of treatment works, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(d) Authorization of Appropriations.—There is authorized to be appropriated $2,000,000 to carry out this section for fiscal years beginning after September 30, 1985.

SEC. 49. PULP MILL STUDY.

(a) FEASIBILITY STUDY.—The Administrator, in consultation with the State of Alaska, shall conduct a study to determine the feasibility of resolving the air pollution control, solid waste disposal, water quality standards compliance, and energy impacts associated with the achievement of best practicable technology under section 301 of the Federal Water Pollution Control Act with respect to the Alaska Lumber and Pulp Company, located at Sitka, Alaska (NPDES permit numbered AK000053-1).

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Administrator shall submit a report on the results of the study conducted under subsection (a) to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

SEC. 50. STUDY OF RAINFALL INDUCED INFILTRATION INTO SEWER SYSTEMS.

(a) STUDY.—The Administrator shall study problems associated with rainfall induced infiltration into wastewater treatment sewer systems.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Administrator shall submit to Congress a report on the results of such study, along with recommendations on reasonable methods to reduce such infiltration and on regulatory mechanisms to address special problems associated with increased flows from such systems resulting from such infiltration.

SEC. 51. STUDY OF pH IN DISCHARGES FROM MINING OPERATIONS.

(a) STUDY.—The Administrator shall study effluent limitations as they relate to pH in discharges from mining operations.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Administrator shall submit to Congress a report on the results of such study along with the recommendations as to the feasibility of permitting modifications of such effluent limitations to permit lower pH in such discharges than is otherwise required.

SEC. 52. STUDY OF POLLUTION IN LAKE PEND OREILLE, IDAHO.

(a) COMPREHENSIVE STUDY.—The Administrator shall conduct a comprehensive study of the sources of pollution in Lake Pend Oreille, Idaho, and the Clark Fork River and its tributaries, Idaho, Montana, and Washington, for the purpose of identifying the sources of such pollution. In carrying out this subsection, the Administrator shall consider existing studies, surveys, and test results concerning such pollution.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Administrator shall submit to Congress a report on the results of the study conducted under this section together with any recommendations of the Administrator.

(c) EDUCATION PROGRAM.—The Administrator shall make the report under subsection (b) available to the public and shall carry out such education programs as the Administrator deems appropriate for the purpose of making the public aware of the results of the study conducted under subsection (a) and the recommendations contained in such report.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section for fiscal years beginning after September 30, 1985, such sums as may be necessary.

SEC. 53. LIMITATION ON PAYMENTS.

No payments may be made under this Act except to the extent provided in advance in appropriation Acts.

Mr. ANDERSON. Mr. Chairman, I move to strike the last word.

(Mr. ANDERSON asked and was given permission to revise and extend his remarks.)

Mr. ANDERSON. Mr. Chairman, I rise in strong support of H.R. 8, the Clean Water Reauthorization Act of 1985 as amended. At the outset, I want to commend JIM HOWARD, BOB ROE, GENE SNYDER and ARLEN STANGELAND on crafting another fine bill. Also, the majority and minority staffs of the Water Resources Subcommittee should be commended for their efforts.

As you know, this legislation reauthorizes the important Clean Water Act through 1994. As a coauthor of the landmark 1972 act, I have monitored its progress over the years and most agree that it has helped to improve our Nation's rivers, lakes and streams.

Yesterday, many of our colleagues addressed this Chamber to highlight the major points of H.R. 8. I take this opportunity to look at the bill in a more personal way. Specifically, how it will affect my area in southern California.

First, the EPA Administrator is directed to conduct a study, in consultation with the city and county of Los Angeles, on the problem of the corrosive effects of sulfides in collection and treatment systems.

Unlike much of the rest of the country, southern California has separate storm drains and sanitary sewers. While this eliminates the major environmental problems caused by combined sewer overflows which plagues many communities, it does result in a unique problem caused by the stronger sewage flowing through separate sewers, that is the generation of sulfides and subsequent deterioration of the sewers and treatment works that they cause. These works were constructed at enormous expense of Federal, State and local dollars and because they were properly constructed, they should last a long time. However, the strong sewage and warm temperature in southern California enhance sulfide generation.

The existence of sulfides in large concrete sewers throughout the Los Angeles basin results in the formation of sulfuric acid which corrodes the sewers and creates the potential for sewer collapse. If one of the large sewers, some of which are as large as 7 feet in diameter, were to collapse in Metropolitan Los Angeles, the resulting environmental and public health problems that would occur could be devastating. Further, sulfides are causing corrosion within the treatment works as the sewage enters the POTW.

One of the most effective controls of sulfide generation in sewers is the existence of heavy metals such as iron, zinc, or nickel in the sewage. These heavy metals combine with the sulfide as soon as they are generated, thus preventing the sulfides from corroding the sewers. With the advent of more stringent controls on the discharge of heavy metals into the sewers from industry, there is less metal in the sewer to inactivate the sulfide. The imminent implementation of categorical pretreatment standards on electroplaters and metal finishers will have an enormously profound negative effect on the sulfide problem as more metals are removed from the sewers.

As I have mentioned, this provision of the bill will provide for the EPA Administrator to work cooperatively with the Los Angeles sanitation agencies to develop methods to deal with the problem, including potential modification to the categorical problem.

Another important provision of the measure pertains to the city of Avalon. Avalon is located on Santa Catalina Island, 26 miles off the southern California coast. It is a resort community, whose population swells during the summer months. Prior to 1978, Avalon discharged its raw sewage into the ocean with little, if any, negative impact. Pursuant to the 1972 law, however, the city, in 1978, began operation of a secondary treatment plant.

The sewage treatment plant was designed for an average daily flow of 500,000 gallons, and a peak flow of 1 million gallons per day. The average daily flow during the peak of the summer season is 800,000 gallons per day—peak flows have been as high as 1,600,000 gallons.

To combat this problem, the bill directs the EPA Administrator to make a grant of $3 million to Avalon to upgrade and improve its treatment plant.

In conclusion, Mr. Chairman, I would like to express my strong support for this needed legislation and I hope that all of my colleagues will support it.

AMENDMENT OFFERED BY MR. JONES OF NORTH CAROLINA

Mr. JONES of North Carolina. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. JONES of North Carolina: strike section 36 and insert in lieu thereof the following new section:

SEC. . (a). PURPOSES AND POLICIES.

(1) Congress finds and declares that:

(A) the nation's estuaries are of great importance for fish and wildlife resources; marine transportation; recreation and economic opportunity;

(B) maintaining the health and ecological integrity of these esturaries is in the paramount national interest;

(C) increasing coastal population, unwise development, and other direct and indirect uses of these estuaries threaten their health and ecological integrity;

(D) long-term planning and management will contribute to the continued productivity of these areas, and will maximize their utility to the nation;

(E) better coordination among federal and state programs affecting estuaries will increase the effectiveness and efficiency of the national effort to protect, preserve, and restore these areas, and

(F) existing programs relating to the Chesapeake Bay have demonstrated the strength of the federal-state partnership in comprehensive planning for estuaries.

(2) The purposes of this section are to:

(A) identify nationally significant estuaries that are threatened by pollution, unwise development or overuse;

(B) promote comprehensive planning for, and conservation and management of, nationally significant estuaries by utilizing the water pollution control authorities of the Federal Water Pollution Control Act and the intergovernmental planning and management processes of the Coastal Zone Management Act;

(C) encourage the preparation of special area management plans for estuaries of national significance; and

(D) enhance the coordination of estuarine research.

SEC. . (b) NOMINATION AND SELECTION.

(1) The governor of any state may nominate to the Administrator of the Environmental Protection Agency and the Secretary of Commerce (hereinafter referred to as "Administrator" and "Secretary", respectively) an estuary lying in whole or in part within the state as an estuary of national significance and request a management conference to develop a comprehensive management plan for the estuary. The nomination shall document the need for the conference, the likelihood of success, and information relating to the factors in paragraph (2).

(2) The Administrator and the Secretary, in consultation with other federal agencies, state and local governments and the public, shall review each nomination submitted pursuant to paragraph (1) and select those estuaries of national significance for which comprehensive management plans should be developed. The selection shall be based upon:

(A) the ecological significance of the estuary;

(B) the biological productivity of the estuary and its contribution to fish and wildlife resources of commercial and recreational significance;

(C) the degree to which commercial, residential, recreational, or industrial activities within the estuary and its watershed have impaired or may impair the health and ecological integrity of the estuary; and

(D) the degree to which comprehensive planning and management may contribute significantly to the wise use of the estuary and to its health and ecological integrity.

SEC. . (c). ESTUARINE MANAGEMENT.

(1) The Administrator and the Secretary, with the concurrence of the Governor of each state in which the estuary is located, may convene a management conference for each estuary selected under subsection (b) (2).

(2) The members of the conference shall include the Secretary, the Administrator and other federal, regional, state, and local representatives, and members of the academic-scientific community and the public, as may be necessary to formulate balanced

recommendations on the requirements of a comprehensive management plan, as specified in paragraph (3)(B). In addition, the members of the conference shall:

(A) select the conference chairperson;

(B) establish appropriate operating procedures; and

(C) submit to the Administrator and the Secretary a consolidated application for annual funds to be awarded under this section.

(3) The purpose of the management conference shall be to:

(A) undertake and compile research relating to the estuary for purposes of supporting the development and implementation of a comprehensive management plan for the estuary;

(B) develop a comprehensive management plan for the estuary that will restore and maintain the health and ecological integrity of the estuary. Any comprehensive management plan developed pursuant to this subsection shall meet the requirements for a special area management plan under section 304(17) of the Coastal Zone Management Act (P.L. 92-583) and shall include:

(i) priority corrective actions and compliance schedules to address point and non-point sources of pollution posing the most serious problems to the estuary's physical, chemical, and biological integrity;

(ii) measures providing for the conservation and management of the living resources of the estuary, including shellfish, fisheries, wildlife and associated habitat;

(iii) policies and standards to implement the coastal management objectives for the estuary; and

(iv) a clear delineation of the geographic scope of the management plan including tributaries, watersheds and adjacent ocean areas.

(C) coordinate the implementation of the management plan by the federal, state and local governments participating in the conference.

(4) A management conference convened under this section may be conducted for up to four years. The conference may be extended for one year if, after the initial four-year period, the Administrator and the Secretary determine that substantial progress has been made and that the conference is likely to succeed in fulfilling its objectives.

(5) The Administrator is authoritzed to make grants and expenditures as are necessary to support the administration of a management conference under this section. Such grants and expenditures shall not exceed 75 per centum of these administrative costs and shall be made on condition that non-Federal sources provide at least 25 per centum of the costs.

SEC. . (d). RESEARCH.

(1) Upon convening a management conference under this section, the Secretary and the Administrator, in conjunction with state and local authorities, shall undertake to develop, compile and make available information and research relating to the estuary that would assist in developing and implementing the comprehensive management plan.

(2) The management conference may develop a research plan, which shall include research needs, priorities and guidelines, to promote the coordination and utility of research relating to the estuary, and shall develop such a research plan prior to the award of grants under subsection (d)(4).

(3) In developing a research plan under this subsection, the management conference shall establish advisory committees or other procedures to provide the interdisciplinary technical expertise necessary to address the range of issues requiring research.

(4) The Secretary shall conduct such research as may be necessary to determine the need to convene a management conference under this section or as may be requested by a management conference. Such research shall comply with any applicable research plan under paragraph (2).

(5) The Administrator, with the concurrence of the Secretary, is authorized to make grants to State water pollution control agencies, State coastal zone management agencies, interstate agencies, other public or nonprofit private agencies, institutions, organizations, and individuals to carry out any research plan developed under subsection (d)(2). Such grants shall not exceed 75 per centum of these costs and shall be made on condition that non-Federal sources provide at least 25 per centum of the costs.

SEC. . (e). PLAN APPROVAL.

At the conclusion of a management conference, the Administrator, the Secretary and each participating governor shall review the plan to determine if it meets the requirements of this section and, if so, shall approve the plan.

SEC. . (f). PLAN IMPLEMENTATION.

(1)(A) The Administrator and each participating governor shall undertake the necessary actions pursuant to title III of the Federal Water Pollution Control Act (P.L. 92-500, as amended) and other authorities to implement the measures established pursuant to subsection (c)(3)(B)(i);

(B) The Secretary and each participating governor from a state with an approved coastal zone management program shall ensure that the state has incorporated the plan into its management program pursuant to section 306(g) of the Coastal Zone Management Act (P.L. 92-583); and

(C) The Secretary and each participating governor from a state without an approved coastal zone management program shall ensure that adequate authorities and procedures exist within that state for implementing the coastal management objectives of the plan.

(2) The Administrator is authorized to make grants to States and interstate agencies participating in a management conference which have adopted a comprehensive management plan pursuant to this section. Such grants shall be for purposes of implementing the plan. The amount of the grants to any State or interstate agency for a fiscal year shall be equal to 50 per centum of that State's or agency's cost of implementing the management plan for such fiscal year.

(3) The Secretary is authorized to provide financial assistance to states under the Coastal Zone Management Act (P.L. 92-583, as amended) to implement the requirements of a plan which has met the requirements of paragraph (1)(B).

(4) The Secretary and the Administrator shall monitor the implementation of any plan developed and adopted pursuant to this section. In the event that a state is not making reasonable progress in fulfilling the requirements of subsection (f)(1), the Administrator and the Secretary shall suspend further federal grants under this section until the requirements of subsection (f)(1) are fulfilled.

SEC. . (g). RELATIONSHIP TO OTHER MANAGEMENT PROGRAMS.

(1) Notwithstanding any other provision of this section, no management conference shall be convened for an estuary if the Administrator and the Secretary determine that a management program exists for the estuary that will achieve the purposes of this section.

(2) Nothing in this section shall apply to the Chesapeake Bay Program conducted pursuant to Public Law 94-116.

SEC. . (h). REPORT TO CONGRESS.

The Administrator and the Secretary shall submit to Congress not later than January 1, 1987 and biennially thereafter a comprehensive report on the activities authorized under this section, which shall:

(1) list the priority monitoring and research needs for estuaries to meet the objectives of this section;

(2) assess the health of the nation's estuaries evaluated under this section;

(3) discuss the pollution problems and trends that affect directly or indirectly the water quality, ecosystem, and existing or potential uses of each estuary evaluated under this section; and

(4) evaluate the effectiveness of pollution abatement activities and other management measures undertaken pursuant to this section.

SEC. . (i) RULES AND REGULATIONS.

No later than 180 days after enactment of this section, the Administrator, with the concurrence of the Secretary, shall promulgate regulations to implement this section 553 of title 5, United States Code.

Sec. . (j) AUTHORIZATION OF APPROPRIATIONS.

(1) There is authorized to be appropriated to carry out subsections (c)(5) and (d)(5) amounts not to exceed $10,000,000 for each fiscal year within the period beginning on October 1, 1985 and ending on September 30, 1990, of which not to exceed $2,000,000 annually shall be made available to the Secretary for the purpose of fulfilling the responsibilities outlined in subsections (b), (d), and (e).

(2) There is authorized to be appropriated to carry out subsection (f)(2) amounts not to exceed:

(A) $10,000,000 for the fiscal year ending September 30, 1988;

(B) $30,000,000 for the fiscal year ending September 30, 1989; and

(C) $50,000,000 for the fiscal year ending September 30, 1990.

(3) Amounts appropriated under this subsection are to remain available until expended.

Mr. JONES of North Carolina (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from North Carolina?

Mr. SNYDER. Mr. Chairman, reserving the right to object, we do not have a copy of the amendment, so let me ask, is this the amendment that was printed in the RECORD?

The CHAIRMAN. This is the amendment that was printed in the RECORD.

Mr. SNYDER. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Mr. JONES of North Carolina. Mr. Chairman, the amendment which I am today offering to H.R. 8, as amended, is intended to add a new section to the bill to establish the National Estuarine Program.

Mr. Chairman, the Committee on Merchant Marine and Fisheries believes that the long-term health of our Nation's estuaries is vital to our commercial and recreational fisheries and to good coastal resource management.

In my district alone, for instance, virtually the entire shoreline area is a major estuary on which the economics of the coastal fishing and recreational industries depend. Its continued health is of fundamental long-term interest to our citizens. Other areas along our coasts have equally important estuaries and underscore the need for balanced Federal-State efforts as estuarine planning.

In offering my amendment, I must first call attention to the leadership of Chairman HOWARD, and Chairman ROE, and the members of the Committee on Public Works and Transportation who deserve credit for developing the basic estuary planning approach in the amendment. That approach calls for the development of a comprehensive management plan for major estuaries through a cooperative Federal-State effort similar to the successful Chesapeake Bay Program. My amendment fully incorporates this basic approach and augments it in certain specific respects.

First, it authorizes State governments to nominate candidate estuaries for this planning effort. Second, it will require the planning conference to take account of commercial and recreational fisheries and coastal management considerations.

□ 1310

Third, it will ensure that no Federal implementation funds are spent unless Federal and State agencies make firm commitments to the plans.

Fourth, it provides for more careful research planning in order to ensure the usefulness of any research supported by Federal funds.

Mr. Chairman, I believe the amendment I am offering today represents a solid, carefully thought out proposal. We worked closely with the Committee on Public Works and Transportation and in particular with Chairman HOWARD and Chairman ROE with this proposal.

Mr. Chairman, I urge my colleagues to support this.

I would like to comment further on the cooperation we have had from the subcommittee chairman as well as the full committee chairman and I simply ask support for this amendment.

which I was under the impression was acceptable to the Committee on Public Works.

Mr. Chairman, I yield back the balance of my time.

AMENDMENT OFFERED BY MR. ROE AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. JONES OF NORTH CAROLINA

Mr. ROE. Mr. Chairman, I offer an amendment as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. Roe as a substitute for the amendment offered by Mr. Jones of North Carolina: Page 86, after line 25, in lieu of the matter to be inserted by the Jones, N.C., amendment, insert the followings:

SEC. 36. MAINTENANCE OF WATER QUALITY IN ESTUARIES.

(a) Purposes and Policies.—

(1) Findings.—Congress finds and declares that:

(A) the Nation's estuaries are of great importance for fish and wildlife resources and recreation and economic opportunity;

(B) maintaining the health and ecological integrity of these estuaries is in the national interest;

(C) increasing coastal population, development, and other direct and indirect uses of these estuaries threaten their health and ecological integrity;

(D) long-term planning and management will contribute to the continued productivity of these areas, and will maximize their utility to the Nation; and

(E) better coordination among Federal and State programs affecting estuaries will increase the effectiveness and efficiency of the national effort to protect, preserve, and restore these areas.

(2) Purposes.—The purposes of this section are to—

(A) identify nationally significant estuaries that are threatened by pollution, development, or overuse;

(B) promote comprehensive planning for, and conservation and management of, nationally significant estuaries;

(C) encourage the preparation of management plans for estuaries of national significance; and

(D) enhance the coordination of estuarine research.

(b) Management Conference.—

(1) Nomination of estuaries.—The Governor of any State may nominate to the Administrator an estuary lying in whole or in part within the State as an estuary of national significance and request a management conference to develop a comprehensive management plan for the estuary. The nomination shall document the need for the conference, the likelihood of success, and information relating to the factors in paragraph (2).

(2) Convening of conference.—

(A) In general.—In any case where the Administrator, in consultation with the Secretary of Commerce, determines, on his own initiative or upon nomination of a State under paragraph (1), that the attainment or maintenance of that water quality in an estuary which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water, requires the control of point and nonpoint sources of pollution in more than one State, the Administrator shall select such estuary and convene a management conference.

(B) Basis for selection.—The selection of an estuary under subparagraph (A) shall be based upon—

(i) the ecological significance of the estuary;

(ii) the biological productivity of the estuary and its contribution to fish and wildlife resources of commercial and recreational significance;

(iii) the degree to which commercial, residential, recreational, or industrial activities within the estuary and its watershed have impaired or may impair the health and ecological integrity of the estuary; and

(iv) the degree to which comprehensive planning and management may contribute significantly to the wise use of the estuary and to its health and ecological integrity.

(C) Priority consideration.—The Administrator shall give priority consideration under this section to Long Island Sound; Buzzards Bay, Massachusetts; Delaware Bay, Delaware and New Jersey; Albemarle Sound, North Carolina; and Sarasota Bay, Florida.

(3) Boundary dispute exception.—In any case in which a boundary between two States passes through an estuary and such boundary is disputed and is the subject of an action in any court, the Administrator shall not convene a management conference with respect to such estuary before a final adjudication has been made of such dispute.

(4) Existing management program exception.—Notwithstanding any other provision of this section, the Administrator shall not convene a management conference with respect to an estuary if he determines that there exists a management program for the estuarine zone of such estuary with sufficient authority to achieve the purposes of this section.

(c) Members of Conference; Lead Agency.—The members of a conference under this section shall include the Administrator, the Administrator of the National Oceanic and Atmospheric Administration, a representative of each of those States which are located, in whole or in part, within the estuarine zone of the estuary for which the conference is convened, a representative of each interested Federal agency as determined appropriate by the Administrator, a representative of any interstate agency having jurisdiction over all or a significant part of the estuary, and representatives of local governments within the estuarine zone as deemed appropriate by the Administrator. In any case in which an interstate agency has jurisdiction over all or a significant part of the estuary, such agency shall be the lead agency for purposes of carrrying out this section.

(d) Purposes of Conference.—The purposes of any management conference convened with respect to an estuary under this subsection shall be—

(1) to develop a comprehensive master plan for such estuary in accordance with subsection (e) that will restore and maintain the help and ecological integrity of the estuary;

(2) to coordinate the implementation of the master plan by the States participating in the conference; and

(3) to monitor the estuary to determine the effectiveness of actions taken pursuant to the master plan.

(e) Master Plan.—

(1) Contents.—The master plan developed pursuant to paragraph (1) of subsection (d) shall be developed in coordination with any relevant special area management plan under the Coastal Zone Management Act. Such plan shall include priority corrective actions and compliance schedules to address point and nonpoint sources of pollution posing the most serious problems to the estuary's physical, chemical, and biological integrity. Such actions may include, but need not be limited to any of the following standards and practices which are necessary for the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water:

(A) development of water quality standards for waters within the estuarine zone;

(B) development of toxicity-based standards for toxic pollutants;

(C) development of water quality based effluent standards for significant point sources of pollution;

(D) development of best management practices to control nonpoint sources of pollution; and

(E) other measures providing for the conservation and management of the living resources of the estuary.

(2) Utilization of existing data.—In developing a master plan under this section, the management conference shall survey and utilize existing reports, data, and studies relating to the estuary that have been developed by or made available to Federal, interstate, State, or local agencies.

(f) Period of Conference.—A management conference convened under this section shall be convened for at least four years. Such conference may be extended by the Administrator, and if terminated after the initial four-year period, may be reconvened by the Administrator at any time thereafter, as may be necessary to meet the requirements of this section.

(g) Grants for Implementation of Master Plan.—The Administrator is authorized to make grants to States and interstate agencies participating in a management conference which has adopted a comprehensive master plan pursuant to this section for the estuary which is the subject of such conference. The amount of the grants to any State or interstate agency for a fiscal year shall, subject to such amounts as are provided in appropriation Acts, be equal to 50 percent of that State's or agency's cost of implementing the master plan for such fiscal year.

(h) Plan Approval.—At the conclusion of a management conference, the Administrator, is consultation with the Secretary of Commerce, and each participating governor shall review the comprehensive management plan for the estuary to determine if it meets the requirements of this section and, if so, shall approve the plan.

(i) Research.—

(1) Research to assist in development of plan.—Upon convening a management conference under this section, the Secretary and the Administrator, in conjunction with State and local authorities, shall undertake to develop, compile, and make available information and research relating to the estuary that would assist in developing and implementing the comprehensive management plan.

(2) Research plan.—The management conference may develop a research plan, which shall include research needs, priorities, and guidelines, to promote the coordination and utility or research to the estuary.

(3) Advisory committees.—In developing a research plan under this subsection, the management conference shall establish advisory committees or other procedures to provide the interdisciplinary technical expertise necessary to address the range of issues requiring research.

(4) Research to determine need for conference.—The Secretary shall conduct such research as may be necessary to determine the need to convene a management conference under this section or as may be requested by a management conference. Such research shall comply with any applicable research plan under paragraph (2).

(j) Definitions.—For purposes of this section, the terms "estuary" and "estuarine zone" have the meanings such terms have in section 104(n)(4) of the Federal Water Pollution Control Act, except that the term "estuarine zone" shall also include those portions of tributaries draining into the estuary up to the historic height of migration of anadromous fish or the historic head of tidal influence, whichever is higher. For purposes of this section, the term "State" has the meaning such term has in section 502(3) of such Act.

(k) Report to Congress.—The Administrator, in consulation with the Secretary of Commerce, shall submit to Congress not later than January 1, 1987, and biennially thereafter a comprehensive report on the activities authorized under this section, which shall—

(1) list the priority monitoring and research needs for estuaries to meet the objectives of this section;

(2) assess the health of the Nation's estuaries evaluated under this section;

(3) discuss the pollution problems and trends that affect directly or indirectly the water quality, ecosystem, and existing or potential uses of each estuary evaluated under this section; and

(4) evaluate the effectiveness of pollution abatement activities and other management measures undertaken pursuant to this section.

(l) Authorization of Appropriations.—

(1) Grants.—There is authorized to be appropriated to carry out this section not to exceed $13,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990. Amounts appropriated under this paragraph shall remain available until expended.

(2) Other expenses.—There is authorized to be appropriated to the Administrator not to exceed $2,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, for—

(A) expenses related to the administration of management conferences under this section;

(B) grants to State water pollution control agencies, State coastal zone management agencies, interstate agencies, other public or nonprofit private agencies, interstate agencies, other public or nonprofit private agencies, institutions, organizations, and individuals for research, surveys, studies, and modeling and other technical work necessary for the development of a comprehensive master plan under this section; and

(C) monitoring the implementation of a comprehensive master plan by the management conference or by the Administrator in any case in which the conference has been terminated.

Mr. ROE (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Mr. ROE. Mr. Chairman, the distinguished gentleman from North Carolina has made a presentation from his committee's point of view on a very important piece of legislation that has to do with estuarine areas. At this stage of the discussion and after review of the amendment the gentleman from North Carolina [Mr. JONES] has presented, we have not been able to resolve some differences that exist between the Public Works Committee and the committee of the gentleman from North Carolina [Mr. JONES].

We are offering this substitute, which in essence does follow probably 95 percent of what is in the Jones amendment; however, we have a legitimate problem that I would like to share with both my good friend, the gentleman from North Carolina [Mr. JONES] and with the rest of the members of the committee. Our major difference with the Jones amendment is that it gives equal jurisdiction with NOA and EPA to carry out the clean water bill.

Now, the primary responsibility of the clean water bill is under EPA, and it is our deep concern that if we mix that level of responsibility, then we have two separate Appropriations Committees that are involved. We have an integral relationship with the coastal zone management plan and we just feel that mixing the level of responsibility is not going to be workable.

Now, what we are trying to do in our amendment here, our substitute amendment, is to absorb a substantial portion of what the Merchant Marine Committee has done under the very distinguished chairman and we would ask him to look at our substitute on that basis.

I would also make this point to the distinguished gentleman that we understand what they are trying to achieve. I am sure that between the Committee on Merchant Marine and the Committee on Public Works that we can hammer out that point before we go to conference and we will reflect the views of both committees. That is what we are trying to do. We think it will meet the needs of the Committee on Merchant Marine and the Committee on Public Works, who are really, you might say, compadres in this whole venture.

We feel if we do not go in our direction that we are going to be doing violence to the jurisdiction of the EPA.

Mr. STANGELAND. Mr. Chairman, will the gentleman yield?

Mr. ROE. Yes, I will, of course.

Mr. STANGELAND. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I rise in support of the substitute amendment to the amendment by the gentleman from North Carolina.

Mr. Chairman, as you know, our committee has worked hard to develop a bill that can and should have the support of all of the Members of this body. Therefore, when the gentleman from North Carolina, the distinguished chairman of the Committee on Merchant Marine and Fisheries, expressed concerns with the provision the committee had drafted on the National Estuaries Program, our committee took another careful look at the provision and the provision offered by the gentleman from North Carolina. We have concluded that there is considerable merit in much of what the gentleman seeks to do. Therefore, we have developed a substitute amendment which is a composite of the ideas advanced by the distinguished chairman of the Merchant Marine Committee and those contained in the original committee version.

I believe ours is an approach that achieves the best of the two versions. Accordingly, I urge my colleagues to support our substitute amendment.

Mr. McKINNEY. Mr. Chairman, will the gentleman yield?

Mr. ROE. Yes, of course.

Mr. McKINNEY. Mr. Chairman, I appreciate the gentleman yielding.

Am I to understand that this substitute amendment would have in it the priority consideration that the gentleman spoke to yesterday on the floor?

Mr. ROE. The answer is yes.

Mr. McKINNEY. I thank the gentleman very much. I appreciate the chairman's answer.

Mr. ROE. Well, I would hope, Mr. Chairman, that the committees could agree to this substitute, with the understanding that it is the intent of our committee to work as closely as we can. I know the gentleman from New Jersey [Mr. HOWARD], the chairman of the Committee on Public Works, and our distinguished colleague as chairman of the Committee on Merchant Marine need to work together to develop the proper language that we would be able to utilize in conference.

I really would ask the committee to go along in supporting this substitute.

Mr. THOMAS of Georgia. Mr. Chairman, will the gentleman yield?

Mr. ROE. Yes, of course.

Mr. THOMAS of Georgia. Mr. Chairman, I would like to ask the gentleman from New Jersey, I have a specific concern of my own, if in the substitute amendment that there is proper provision made for the case in which a boundary, a State boundary passing through an estuary, that we might not convene a conference on that particular estuary if there is a court case involved until such time as the case has been adjudicated.

Mr. ROE. Yes; the gentleman is correct.

Mr. THOMAS of Georgia. Mr. Chairman, I thank the gentleman.

The CHAIRMAN. The time of the gentleman from New Jersey [Mr. ROE] has expired.

(By unanimous consent, Mr. ROE was allowed to proceed for 3 additional minutes.)

Mr. FUQUA. Mr. Chairman, will the gentleman yield?

Mr. ROE. I yield to the gentleman from Florida.

(Mr. FUQUA asked and was given permission to revise and extend his remarks.)

Mr. FUQUA. Mr. Chairman, I rise in support of the substitute offered by the gentleman from New Jersey, which contains several sections that have been the subject of discussions and letters between the Public Works and Transportation and Science and Technology Committees. I am pleased to report that the jurisdictional issues have been amicably resolved as reflected in the exchange of letters between Chairman HOWARD and myself.

COMMITTEE ON SCIENCE
AND TECHNOLOGY,
Washington, DC, July 11, 1985.

Hon. JAMES J. HOWARD,
Chairman, House Committee on Public Works and Transportation, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I am writing you concerning H.R. 8 which, as reported, does not contain any section over which our Committee claims jurisdiction. However, this year, as the Public Works Committee did last year on H.R. 3282, I am under the impression that you plan to offer these sections of the introduced bill that were purged from the reported bill as a floor amendment.

It is my hope that you will accept and agree to our claim of jurisdiction over several sections of the introduced bill.

I was disappointed last year that during the floor debate on the Roe amendment that our jurisdictional claim was not accepted, in fact, Mr. Strangeland said ". . . I must stress again that this action does not in any way admit that the jurisdictional claims were valid. To the contrary, the Committee believes they were not." H6894, June 26, 1984.

To better clarify our position vis-a-vis H.R. 8, I wrote the Speaker on June 27th seeking sequential referral of H.R. 8 as introduced. The request was denied by letter of July 9 since the reported bill was purged of sections over which we claim jurisdiction. The speaker also said: "I do not dispute that the sections of H.R. 8 introduced which you mention in your accompanying memorandum contain matter within the jurisdiction of the Committee on Science and Technology. Those sections have been removed from the Public Works and Transportation Committee's amendment in the nature of a substitute. While there obviously exists a jurisdictional overlap between your Committee and Public Works and Transportation with respect to the issue of pollution of navigable waters and its relation to environmental research and development questions, I would in this instance encourage your Committee, together with the Committee on Merchant Marine and Fisheries, which made a similar request, to cooperate in the development of possible floor amendments."

Today I have also prepared a bill for introduction which contains only the sections over which we claim juriadiction. I am prepared to introduce it to further clarify the jurisdictional claim and to offer it as an amendment to H.R. 8. It contains the identical language as Sections 47, 48, 51, 52, and 53 of the introduced bill except Section 53 has been amended in two places, one, the amount has been reduced from $25 million to $2.5 million, and "the appropriate committees of the House and Senate" has been substituted for the Public Works Committees.

It is my hope that you can accept our jurisdictional claims, so that H.R. 8, which we support, can proceed expeditiously to the floor.

Sincerely,

DON FUQUA,
Chairman.

COMMITTEE ON PUBLIC WORKS
AND TRANSPORTATION,
Washington, DC, July 22, 1985.

Hon. DON FUQUA,
Chairman, Committee on Science and Technology, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: As you know, H.R. 8, the Water Quality Renewal Act of 1985, as reported by the Committee on Public Works and Transportation, will be considered for action on the House Floor this week and we expect it will enjoy overwhelming support.

Your letter of July 11 requests our support in recognizing that sections of the introduced bill, specifically sections 47, 48, 51, 52 and 53, are within the joint jurisdiction of your Committee and ours. You state also that you are prepared to offer an amendment to H.R. 8 covering the identical language in sections 47, 48, 51, and 52 with section 53 modified to reduce the amount of $25 million to $2.5 million and "the appropriate committees of the House and Senate" has been substituted for the Committee on Public Works and Transportation.

This is to advise you that the Committee on Public Works and Transportation does recognize our joint jurisdictional claims in these matters between our Committees.

We appreciate your support for H.R. 8.

Sincerely,

JAMES J. HOWARD,
Chairman.

Mr. JONES of North Carolina. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I am well aware that the substitute will prevail; however, it is a little disappointing, to be candid and frank, to work out what we thought was a compromise with this committee and with the Rule Committee that I would be able to offer this amendment. Only today at 10 minutes to 12 was I advised of this substitute; so with that, not being critical, I just am well aware of the prevailing sentiment of the House. I cannot attack the amendment, nor can I defend it, because I do not know what it does. I have not had a chance to analyze it at all.

Ms. MIKULSKI. Mr. Chairman, will the gentleman yield?

Mr. JONES of North Carolina. I yield to the gentlewoman from Maryland.

(Ms. MIKULSKI asked and was given permission to revise and extend her remarks.)

Ms. MIKULSKI. Mr. Chairman, I join Chairman Jones in support of the amendment to H.R. 8 establishing the National Estuarine Program. This program will allow State and local governments, along with EPA, NOAA, and other Federal agencies to manage important estuaries, to protect their living marine resources, and to preserve and restore water quality in them.

As chair of Oceanography Subcommittee, I share Chairman Jones' view that the National Estuarine Program should build upon the two major Federal laws affecting our Nation's coastal areas and estuaries—the Clean Water Act and the Coastal Zone Management Act.

This amendment establishes a management conference approach to estuarine cleanups. It has worked for the Chesapeake Bay, and I think that this model should be followed to clean up other major estuaries.

What I like about the National Estuarine Program, is that it operates with the active participation and support of State and local governments. Under this amendment to H.R. 8, estuary management plans will not be written in Washington by Federal agencies, but will be written by local and State people who live near these major estuaries.

Mr. Chairman, we must do something to prevent the degradation and destruction of our Nation's estuaries. We now know how enormously productive these areas are, and important they are to the economies of their regions.

I believe that this amendment to H.R. 8 will create an effective way to preserve, protect, and develop our major estuaries, and I urge my colleagues to support it.

Thank you.

Mr. JONES of North Carolina. Mr. Chairman, I can assure the gentlewoman that I have nothing but the most intense desire to work with this committee. In the past we have been able to work very well together.

Mr. EDGAR. Mr. Chairman, I move to strike the requisite number of words.

I yield to the Chairman, the gentleman from New Jersey [Mr. Roe].

Mr. ROE. Mr. Chairman, I really feel badly about there being apparently some misunderstanding of intent, or warmth, or respect. There is nobody, Mr. Chairman, that I would respect more than the distinguished chairman, the gentleman from North Carolina, the chairman of the Merchant Marine Committee.

□ 1320

There may be a little slippage here in the dialog, but it is not the intent of the Public Works and Transportation Committee, or the Water Resources Subcommittee, or anybody here on our respective committees to either attempt to take away any jurisdiction or to harm anything the gentleman is trying to do. We are simply saying that there is a legitimate problem that we will both face, your committee and our committee, in split authority and jurisdiction in appropriations and in two or three other ways. We do not want the gentleman in any way to feel that we are not being respectful to the great work he has done in a very important committee as chairman of that committee in this House.

What we will promise the gentleman we will do as we unfold this language is that we will work with him and his committee directly to hammer out language that will be acceptable before we go to conference on it. So I can guarantee the gentleman from North Carolina [Mr. Jones] that we will follow in that direction.

Mr. EDGAR. Let me just use a moment of my time to congratulate the gentleman from New Jersey, Chairman Roe, and the gentleman from Minnesota [Mr. Stangeland] for a very good, clean water bill, and to say that I support the Roe compromise amendment. He has made some important changes in the provisions of H.R. 8 in the areas of citizen suits, stormwater discharges, backsliding, and variances for fundamentally different factors.

But more importantly, I support the essence of the Clean Water Act that our committee worked so hard to put together. I think as we move to the second phase of what I call the second environmental revolution where we deal with the tougher environmental issues like nonpoint source pollution, this bill does a good job, and I want to commend both of my colleagues for their leadership.

I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Jersey [Mr. Roe] as substitute for the amendment offered by the gentleman from North Carolina [Mr. Jones].

The amendment offered as a substitute for the amendment was agreed to.

The CHAIRMAN. The question is on the amendment offered by the gentleman from North Carolina [Mr. Jones], as amended.

The amendment, as amended, was agreed to.

Mr. ROE. Mr. Chairman, I ask unanimous consent for the correction of a misspelled word in the overall amendment on page 5, line 17. The word should read "health," rather than "help."

The word was mispelled.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

AMENDMENT OFFERED BY MR. PACKARD

Mr. PACKARD. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Packard: Page 87, strike out line 16 and all that follows through line 4 on page 91, and insert in lieu thereof the following:

SEC. 32. SAN DIEGO, CALIFORNIA.

(a) Purpose.—The purpose of this section is to protect the economy, public health, environment, surface water and public beaches, and water quality of the city of San Diego, California, and surrounding areas, which are endangered and are being polluted by raw sewage emanating from the city of Tijuana, Mexico.

(b) Construction Grants.—Upon approval of the necessary plans and specifications, the Administrator is authorized to make grants to the Secretary of State, acting through the American Section of the International Boundary and Water Commission (hereinafter in this section referred to as the "Commission"), or any other Federal agency or any other appropriate commission or entity designated by the President. Such grants shall be for construction of a project consisting of—

(1) treatment works in the city of San Diego, California, to provide primary or more advanced treatment of municipal sewage and industrial waste from the city of Tijuana, Mexico; and

(2) a publicly owned treatment works in such city to provide primary or more advanced treatment of such amount of municipal sewage and industrial waste for such city of San Diego as may be necessary to meet the objectives of the Federal Water Pollution Control Act.

(c) Further Measures.—As a further measure, the Administrator shall make grants to the Commission or such other agency, commission, or entity as may be designated under subsection (b) for the construction of defensive treatment works to protect residents of the city of San Diego and surrounding areas from pollution resulting from any inadequacies or breakdowns in wastewater treatment works and systems in Mexico. The Commission or such agency, commission, or entity is authorized to construct, operate, and maintain such defensive treatment works in order to accomplish the purposes of this section.

(d) Approval of Plans.—Any treatment works for which a grant is made under this section shall be constructed in accordance with plans developed by the Commission or such agency, commission, or entity, in consultation with the city of San Diego, and approved by the Administrator to meet the construction standards which would be applicable if such treatment works were being constructed under section 201 of the Federal Water Pollution Control Act.

(e) Capacity of Project.—The project authorized by this section shall provide capacity to provide treatment of municipal sewage and industrial waste for the cities of Tijuana and San Diego.

(f) Applicability of Act.—All provisions of the Federal Water Pollution Control Act which are applicable to a grant made to a State, municipality, or intermunicipal or interstate agency under section 201(g) of such Act shall apply to a grant made to an agency, commission, or entity for construction of treatment works under subsection (b)(2) of this section, except that the non-Federal share of the costs of such construction shall be paid by the city of San Diego and other non-Federal interests.

(g) Federal Share.—Construction of the treatment works under subsections (b)(1) and (c) of this section with respect to municipal sewage and industrial waste from the city of Tijuana shall be at full Federal expense less any costs paid by the State of California and less any costs paid by the Government of Mexico as a result of agreements negotiated with the United States.

(h) Ocean Outfall Permit.—Upon application of the city of San Diego, the Administrator may issue a permit under section 402 of the Federal Water Pollution Control Act which modifies the requirements of section 301(b)(1)(B) of such Act to permit the discharge of pollutants for any ocean outfall constructed with Federal assistance under this Act if such pollutants have received primary or more advanced treatment. Any permit issued pursuant to this subsection shall not be effective after December 31, 1993.

(i) Extra Capacity.—If the treatment works constructed under this section to provide treatment for municipal sewage and industrial waste from the city of Tijuana has capacity which is no longer necessary to provide such treatment, such capacity may be used to provide treatment for municipal sewage and industrial waste for the city of San Diego.

(j) Definitions.—For purposes of this section, the terms "construction" and "treatment works" have the meanings such terms have under section 212 of the Federal Water Pollution Control Act.

(k) Authorization of Appropriations.—There is authorized to be appropriated for fiscal years beginning after September 30, 1985, such sums as may be necessary to the Administrator to make grants under this section and such sums as may be necessary to the Commission or such other agency, commission, or entity as the President may designate under subsection (b), to carry out this section.

Mr. PACKARD (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. PACKARD. Mr. Chairman, my

amendment simply is to enact some minor and technical changes. It in essence changes the jurisdiction of the project from the Army Corps of Engineers to the International Boundary and Water Commission. It also allows California to participate in the cost sharing.

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. PACKARD. I yield to the gentleman from New Jersey.

Mr. ROE. Mr. Chairman, this is a technical amendment definitely, and we have reviewed this amendment on this side. We have no objection to the gentleman's amendment.

Mr. STANGELAND. Mr. Chairman, will the gentleman yield?

Mr. PACKARD. I am happy to yield to the gentleman from Minnesota.

Mr. STANGELAND. Mr. Chairman, likewise, we have reviewed the amendment on this side. It is an improvement over the committee print and the way the committee has reported the bill to the House, and certainly I support the amendment.

Mr. PACKARD. Mr. Chairman, I thank my chairman and ranking member, and I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. PACKARD].

The amendment was agreed to.

Mr. ANDREWS. Mr. Chairman, I move to strike the last word and to engage the chairman of the subcommittee at colloquy.

Mr. Chairman, I have a question concerning the sewage construction grants allocation formula contained in H.R. 8.

It is my understanding that the allocation formula contained in this bill is composed of two parts—half uses EPA's 1976 survey of needs and the estimated 1976 population and the other half uses the EPA's 1980 survey of needs. It is also my understanding that EPA has completed a 1984 survey of State needs and we have available population estimates from the Bureau of the Census. In my opinion, this updated EPA data should be used to input the formula used to calculate the allocation to the States.

While the Senate's Clean Water Act amendments includes an allocation formula which has been updated to utilize the EPA's 1984 survey of needs, it totally changes the structure of the formula. When the conference on the Clean Water Act meets, Mr. Chairman, it is my hope that you will support, at the very least, updating the current formula by using the most current population estimates and needs survey information so as to take into consideration the water quality needs of the Nation as they exist today. I wonder, Mr. Chairman, if you could reassure me of intentions on this matter.

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. ANDREWS. I yield to the gentleman from New Jersey.

Mr. ROE. Mr. Chairman, I wish to assure the gentleman we intend to examine the allotment formula very carefully in conference as part of this effort. We by all means will review all relevant data in order to develop an equitable allotment formula which takes into consideration the need of all of the States, and I think the gentleman has made a contribution to the debate today.

Mr. ANDREWS. Mr. Chairman, since the passage of the 1972 Clean Water Act, great strides have been made to improve the water quality of the Houston ship channel. Through the combined effort of industrial and domestic dischargers, loadings of oxygen demanding materials have been reduced sevenfold, from over 400,000 pounds per day to approximately 60 pounds per day. As a result, dissolved oxygen levels in the Houston ship channel have been significantly increased.

However, due to the physical characteristics of the channel, a sluggish body of water influenced by tidal activity and a salt wedge, we have reached the point where measurable increases in dissolved oxygen levels cannot be attained through state-of-the-art treatment technologies on publicly owned treatment plants.

Computer modeling has shown that even with the installation of state-of-the-art technology controls on these municipal plants, it will be very difficult, if not impossible, to attain water quality standards. Whereas, Federal law requires that POTW's meet effluent limits of 30 milligrams per liter of biochemical oxygen demand [BOD] and 30 milligrams per liter of total suspended solids [TSS], discharges in the Houston ship channel watershed currently operate under limits of 10 milligrams per liter BOD and 15 milligrams per liter of TSS. The computer modeling studies show that state-of-the-art technology, that is, reductions to 5 milligrams per liter BOD, will have no appreciable impact on dissolved oxygen levels.

On the other hand, studies are ongoing which indicate the utilization of instream aeration in the Houston ship channel, in combination with the advanced wastewater technology currently utilized, will result in the attainment of water quality standards in the Houston ship channel. Instream aeration can be initiated at a fraction of the cost to install state-of-the-art technology on POTW's. It has been estimated that capital costs and operating expenses for state-of-the-art treatment would cost up to $300 million through 1992 for discharges in the channel watershed, with no appreciable impact. Instream aeration would require expenditures of a few million dollars with a significant beneficial impact in dissolved oxygen levels in the Houston ship channel.

Mr. Chairman, I want to emphasize that the use of this alternative technology in my area is in no way a retreat from the strict water standards that must remain in place to ensure the protection of Galveston Bay. But I do believe that instream aeration could present an excellent alternative for the few areas like my own which face water quality problems that cannot be addressed by strict adherence to traditional methods.

I wonder if the chairman would please comment.

The CHAIRMAN. The time of the gentleman from Texas [Mr. ANDREWS] has expired.

(By unanimous consent, the gentleman from Texas [Mr. ANDREWS] was allowed to proceed for 2 additional minutes.)

☐ 1330

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. ANDREWS. I yield to the gentleman from New Jersey.

Mr. ROE. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I think the gentleman has done an admirable job in expressing and digesting for the benefit of the committee what the serious problems are which exist in the Houston ship channel. I think the gentleman is right on target. I would say to the gentleman that as far as the committee is concerned, and myself, of course, that his observation on the use of aeration as an added starter, if you like, an added technological use, should be encouraged by EPA. I think what is happening is that we have not given enough attention to the use of this mechanism that the gentleman has so well discussed. I thoroughly agree with what the gentleman is saying and will extend every effort to see that EPA does move in the direction of giving priority to aeration of these streams.

Mr. ANDREWS. I thank the gentleman.

Mr. Chairman, I yield back the balance of my time.

Mr. ANDERSON. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, will the gentleman from New Jersey [Mr. ROE] yield for a question and clarification of the intent of section 42(a) which requires the EPA Administrator to make a grant of $3 million to Avalon, CA, for improvements to the treatment facility in that community?

Mr. ROE. I yield to the gentleman from California.

Mr. ANDERSON. The city of Avalon received a clean water grant for phase I of a two-phase treatment plant construction project in 1973, and the present treatment plant was placed into operation in 1976. The grant was for $2.1 million and phase I was completed in early 1978. Phase II of the project, according to the California Water Quality Control Board: "is now needed to alleviate hydraulic and organic overloading of the phase I facilities * * *. This proposed phase II project is approximately 5 years overdue and the treatment facilities, although salvageable, are in a general state of disrepair." As this is phase II of the project which began in 1973, are we correct that the Federal share of this project is 75 percent?

Mr. ROE. If the gentleman will yield, the gentleman is absolutely correct.

Mr. ANDERSON. I thank the gentleman.

Mr. ROE. I think the gentleman has established the case very, very well, on the situation affecting Avalon, CA. Mr. Chairman, I welcome the opportunity to clarify with the gentleman what the intent of law is and what the community should be eligible to do.

Mr. ANDERSON. I thank the gentleman.

Mr. DYSON. Mr. Chairman, I move to strike the last word.

(Mr. DYSON asked and was given permission to revise and extend his remarks.)

Mr. DYSON. Mr. Chairman, several years ago I went to meet with the Subcommittee on Water Resources of the full Committee on Public Works and Transportation about the Chesapeake Bay, an issue very dear to me. We just received an EPA report that basically said that those of us who live in Pennsylvania, Maryland, and Virginia have just spent 350 years using and abusing the Chesapeake Bay, and that if we wanted to do something to reverse that course we were going to have to get together as a unit and work together.

Mr. Chairman, I proposed some legislation that had the endorsement and cosponsorship of all the Representatives in those three States. It was referred to BOB ROE's Subcommittee on Water Resources. His subcommittee had a series of four hearings in which the Governors of all three of those States and Members of Congress went and spoke on this issue.

He has included this as part of the Howard amendment to H.R. 8, the water quality bill.

Mr. Chairman, I want to take the time today to thank him. For someone who is not from this area, he probably knows more about the Chesapeake Bay than probably anybody else on this committee.

I think what we are doing today is a real beginning for the cleanup of the Chesapeake Bay. It is a monumental task; $52 million may seem like a large amount of money, but it is not nearly enough for what we really need to do. As I say, we need to reverse about 350 years of abuse on the Chesapeake Bay.

This is a good beginning. It leaves the road to cleanup essentially to the States with coordination by the EPA.

Mr. Chairman, again I want to thank Bob Roe. I have never seen a Member of Congress, outside of myself, maybe, who works harder. He has just been amazing. As I said, for a very small issue in this overall very large bill, he did hold four hearings in which we were able to bring a number of people into Washington to testify on its behalf. We were also able to take members of the full committee and the subcommittee out on the Chesapeake Bay to take a firsthand look at the pollution problems in this estuary.

Mr. Chairman, it is certainly my hope in the future to get the gentleman from New Jersey to come out on the bay along with the chairman, Chairman Howard, and the ranking minority member, Mr. Snyder, and also Arlan Stangeland, the ranking minority member on the Subcommittee on Water Resources.

Again, I want to thank the gentleman from New Jersey for his help. Again, it is going to go a long, long way. I think generations that he and I will never see or know will benefit from a cleanup of the Chesapeake Bay.

Mr. Chairman, this is a very important beginning today.

Mr. ROE. Mr. Chairman, I thank the gentleman for those kind words.

AMENDMENT OFFERED BY MR. STANGELAND

Mr. STANGELAND. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Stangeland: Page 58, after line 17, insert the following:

(c) Equivalent Local Pretreatment Demonstration Program.—Section 307 is amended by adding at the end the following new subsection:

"(f)(1) Any State may apply to the Administrator to operate an equivalent local pretreatment demonstration program under this subsection with respect to one or more qualifying treatment works located in such State.

"(2) For purposes of this subsection, the term 'qualifying treatment works' means a publicly owned treatment works which—

"(A) is in compliance with applicable effluent limitations pursuant to sections 301 and 302 of this Act and with all requirements of section 402(b)(8) of this Act;

"(B) has had approved by the Administrator before the date of enactment of this subsection the design for a pretreatment program meeting the standards established by the Administrator under subsection (b) of this section; and

"(C) is implementing an equivalent local pretreatment system—

"(i) with respect to which the owner or operator of such treatment works has sufficient funds, equipment, and personnel to effectively administer such equivalent system;

"(ii) with respect to which such owner or operator has adequate technical capability to effectively sample and monitor the quality of (I) the discharges regulated by such equivalent system and the discharge from the treatment works, (II) the sludge resulting from the operation of the treatment works, and (III) the water into which the discharges are made from the treatment works;

"(iii) with respect to which such owner or operator has adequate legal authority to enforce and ensure continued compliance with all requirements of such equivalent system; and

"(iv) which will not impair the ability of such owner or operator to safely use or dispose of sludge resulting from the operation of the treatment works.

"(3) For purposes of this subsection, the term 'equivalent local pretreatment system' means a system developed by the owner or operator of a publicly owned treatment works of regulating the introduction of pollutants into such works, which system is different from that required under section (b) of this section and section 402(b)(8) of this Act but which equally or more effectively prevents the discharge through such works of pollutants which interfere with, pass through, or otherwise are incompatible with such works or which impair current or planned sludge use or disposal.

"(4) The Administrator shall not approve demonstration programs with respect to more than four qualifing treatment works in each of the ten regions of the Environmental Protection Agency. If applications are received by the Administrator with respect to more than four qualifying treatment works for any such region, the Administrator shall select the treatment works for which the programs will be approved taking into account—

"(A) whether or not the State in which the treatment works is located has promulgated water quality standards for the pollutants covered by the equivalent local pretreatment system for such treatment works;

"(B) whether or not the State in which the treatment works is located has an approved permit program under section 402;

"(C) the number and type of indirect discharges that would be subject to the equivalent system;

"(D) the record of compliance achieved by the treatment works in meeting applicable effluent limitations;

"(E) the extent to which the treatment works is exceeding the requirements of secondary treatment under section 301(b)(1)(B); and

"(F) the effectiveness of the equivalent system in encouraging the recycling of pollutants compared to the effectiveness expected of the treatment works under the requirements of subsection (b) of this section in recycling pollutants.

"(5) The Administrator, or State in any case in which the State has an approved permit program under section 402(b), shall, after notice and opportunity for hearing, modify any permit issued under section 402 for a publicly owned treatment works with respect to which a demonstration program is approved under this subsection in order to permit such treatment works to operate an equivalent local pretreatment system. Any such modification shall not be effective after September 30, 1990.

"(6) If the Administrator or the State, as the case may be, determines that the owner or operator of a treatment works for which a permit has been modified under paragraph (5) is not meeting the requirements of this subsection, the Administrator or State may, after notice and opportunity for hearing, modify the permit of such treatment works under section 402 to—

"(A) rescind such permit modification, or

"(B) make such additional modifications in such permit as may be necessary to operate the equivalent local pretreatment system in accordance with the requirements of this subsection.

"(7) If a demonstration program application under this subsection is denied or, if a permit modification under this subsection is rescinded or ceases to be in effect, the affected source or sources shall, upon notification, be immediately subject to the applicable pretreatment standards under subsection (b) of this section and section 402(b)(8) of this Act. Each such source shall comply with such standards in the shortest possible time (as determined by the Administrator or State, as the case may be), which in the case of the denial of a demonstration program application shall not exceed the amount of time that the source had remaining for compliance when such application was filed.

"(8) Each State with an approved demonstration program under this subsection shall operate such program during the period beginning on the date of approval of such program and ending September 30, 1990. Each such State shall report annually to the Administrator on the status of such program.

"(9) Not later than September 30, 1989, the Administrator shall submit a report to Congress on the implementation and effectiveness of the demonstration program carried out by each State under this subsection, along with recommendations on whether the program should be continued after September 30, 1990.".

Mr. STANGELAND (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. STANGELAND. Mr. Chairman, I would like to have the record reflect that I fully support H.R. 8, the Water Quality Renewal Act of 1985, which I cosponsored. I have noting but respect and admiration for my colleague, the gentleman from New Jersey [Mr. ROE] for his tireless effort on this bill and his leadership as chairman of the Subcommittee on Water Resources on which I serve as the ranking Republican member. I believe that through the hard work of the chairman and the other members of our committee we have an excellent bill, one that I was happy to support.

There is, however, one important area not covered by H.R. 8 that I believe should be. Mr. Chairman, as you know, I advocate greater flexibility with the provisions contained in section 307 of the act requiring the application of national categorical pretreatment standards for indirect dischargers. These standards require that industrial sources of pollution which discharge into publicly owned treatment works, or POTW's as they are called, implement measures to treat their effluent before it enters into the POTW's wastewater treatment facility.

Under the act, pretreatment must conform with mandatory Federal standards promulgated by EPA which are not yet fully operational. These new standards will replace many existing and effective pretreatment programs developed at the local level by local officials in response to local needs. Even though these local pretreatment programs may be equal or superior to the protection afforded by the application of Federal standards, they will have to be scrapped at considerable expense to the affected industries and municipalities because the local program may not be identical to the program called for by the application of Federal standards.

It's my view, and the view of many others, that as long as a municipality can adequatley demonstrate to the State and to EPA that its locally developed system of pretreatment is at least as effective as the different national categorical pretreatment standards recommended by the Agency, such a municipality should be afforded the opportunity to implement its own program.

I believe that it's unwise to require compliance with Federal categorical standards when other less costly methods are available, methods which are just as effective in achieving the goals of the act. Furthermore, such a rigid approach inhibit the development of new initiatives that could greatly improve water quality.

Accordingly, I am offering an amendment to H.R. 8 authorizing EPA to select up to 40 municipal treatment programs nominated by the States for inclusion in a 5-year demonstration program. In order to be eligible to participate, the owner or operator of the treatment works would have to show that the treatment works is in compliance with applicable secondary treatment and water quality based effluent limitations under section 301 and 302 and with all the requirements of its section 402 NPDES permit, and that the locally developed pretreatment system is at least as effective in preventing the pass-through of harmful pollutants as required by the national categorical standards. In addition, he would have to show that the POTW can adequately demonstrate effective administration of an equivalent program, including requirements for sampling and monitoring, that the POTW has adequate enforcement authority to insure compliance with its equivalent system, and that the equivalent system will not impair safe use and disposal of resulting sludge.

The amendment would also call for annual reports to the Congress by the States on the effectiveness of the demonstration program and a final report by EPA prior to the conclusion of the program.

Mr. Chairman, I realize that there are many who feel that any program mandated by EPA is always going to be better than one developed locally. I frankly do not agree.

I have visited local pretreatment works, have talked to the people who run them, and I believe that there are very dedicated, imaginative and capable professionals out there that are equal to the challenge of showing to the Federal Government that locally developed programs can be every bit as effective as Washington's if not more so.

To deny them the opportunity to do so, is not only unfair to them, but it is also unfair to the goals of the Clean Water Act.

Therefore, Mr. Chairman, I would ask my colleagues to seriously consider the merits of my proposal and to support my amendment, which would do nothing more than allow States to propose and operate under equally effective approaches to Federal pretreatment standards.

☐ 1340

Mr. Chairman, I yield back the balance of my time.

Mr. EDGAR. Mr. Chairman, I rise in opposition to the amendment.

(Mr. EDGAR asked and was given permission to revise and extend his remarks.)

Mr. EDGAR. Mr. Chairman, I reluctantly oppose the gentleman's amendment to allow pretreatment opt-out. Mr. STANGELAND has been a leader in the efforts to create what I think is one of the best environmental pieces of legislation that we have had before us in some time, and it is a bill that I think will help us move aggressively toward achieving the goal of clean water, and I commend him for his leadership.

I oppose this amendment on several specific grounds, and let me begin by stating that while the gentleman has indicated a number of groups that support the legislation, there is an equally distinguished group of individuals and organizations that oppose this amendment.

Pretreatment opt-out was rejected by Administrator Ruckelshaus when he was the Administrator of EPA, and it was rejected by our House Public Works and Transportation Committee when it was offered in committee and subcommittee; rejected by the Senate Environment and Public Works Committee, and it is absent from the Senate's Clean Water bill.

Specifically, there are several points that should be made. First, this amendment, if allowed to become law, would allow cities to run their own pretreatment programs rather than following the national program and will reduce environmental protection, which is the major goal of the Clean Water Act.

We have just gotten to the point where the pretreatment program is starting, after years of delay, to take effect and be implemented, and this amendment would just further delay protection from toxic pollution at this late date.

The States and the EPA, which has to review each cities' programs, would face a new administrative burden with a separate pretreatment program. For this reason and because technology to compare the national and local programs is not very far advanced, former EPA Administrator William Ruckelshaus, as I indicated, opposed allowing the pretreatment opt-out.

The opt-out could also pit city against city in an effort to attract industries by promising less stringent environmental regulations. We have just seen a nationwide competition for the General Motors Saturn plant, where community after community offered to this large corporation the lowering-of-tax benefits, free land, free opportunities to come into the community and all of those deals were very important as they were structured by local communities; I could envision in the future a local community going to a large corporation and saying: "Come to us. We now take care of our own pretreatment programs and we can give you a place where you can pollute at a higher rate."

I think it is false wisdom, and I would urge my colleague to withdraw his amendment. The amendment will endanger the environment. It allows 40 cities that have industries which have not complied with the law to replace national standards and industrial toxics with local standards.

EPA does not have that data to decide what is equal or more effective. It will delay environmental cleanup; it will reward industries which have not complied, and I believe more importantly, that it is unnecessary.

We have a strong environmental bill; I would urge my colleagues to support what the committee did in full committee, and that is reject the gentleman's amendment.

I yield to the gentleman from Minnesota.

Mr. STANGELAND. I thank the gentleman for yielding.

With all due respect to the gentleman, and I have a great deal of respect for him and for his environmental stand, he is absolutely and totally incorrect when he says that this amendment would allow for lesser standards.

Mr. Chairman, the amendment requires that a local pretreatment program meet national categorical standards. So it is not the lessening of the standards in terms of their effectiveness; it is allowing the local pretreatment to develop their own program so long as it meets the national categorical standards, the effective standards. If they cannot meet that, then they have to come under the national program.

It does not allow 40 cities to get into this program; it allows EPA to have up to 40 cities. It could be 5, 10, 15, or 20. It could be 40.

(By unanimous consent, Mr. EDGAR was allowed to proceed for 2 additional minutes.)

Mr. EDGAR. Mr. Chairman, that is the very point. The local communities, the States, the local cities, do not have the same kind of standards and guidelines that we would hope would be in the national program, and I see no reason for 5 cities, 10 cities, 30 cities, or up to 40 cities being allowed this special treatment.

If our goal is for a national standard of clean waters that are swimmable, fishable; if our goal is for a national clean water act, then I think we have in the legislation already the guidelines and the proposals to work closely with State government, to identify what standards have to be laid out.

I do not think we ought to go, as the gentleman suggests, to a lower standard in certain areas.

The gentleman shakes his head that it is a lower standard. William Ruckelshaus says it was not workable; and William Ruckelshaus was, I think, a very outstanding Director of the Environmental Protection Agency, and he rejected the idea.

Those of us in the committee who have looked at this issue rejected it, in our committee jurisdiction, and I do not think the gentleman has given adequate evidence that anything has changed since the rejection of this idea in the past.

The concern by myself and others is that it will in fact give an opportunity for lowered standards, and give an opportunity to shop around for the city or the community that has the pretreatment standards that can best match a particular industry that may in fact want to pollute.

I appreciate the gentleman's trying to tailor and shape this language so that it looks like an innocent amendment, but I have to say that it just is not an innocent amendment.

I yield to the gentleman.

Mr. STANGELAND. Let me say that whether it is an innocent amendment or not, it is an amendment to enhance the goals of the Clean Water Act.

(On request of Mr. STANGELAND and by unanimous consent, Mr. EDGAR was allowed to proceed for 2 additional minutes.)

Mr. EDGAR. I yield to the gentleman.

Mr. STANGELAND. The gentleman makes the point that what is different today than in the past, when this was rejected by committee.

First of all, the amendment in its present form is the most tightly drawn amendment that you have ever seen dealing with this issue. That is No. 1.

No. 2, the gentleman from Minnesota hopes that he can enlighten enough Members to allow for some local, equal equivalency. We are talking about the quality of the water out of the pipe, and if a local program can deliver the quality equal or better than the national categorical standards, they ought to be allowed to do so.

This can develop into new, different types of treatment that perhaps are most cost-effective than we have under the present national categorical standards program.

□ 1350

To say that this is contrary to clean water, I would just point out that the professionals in the field, all, I would expect, equal to, and some superior to, those who run EPA, say that this is workable, it is doable, and they can enhance the Act and enhance our goals of clean water with their local programs.

The CHAIRMAN. The time of the gentleman from Pennsylvania [Mr. EDGAR] has expired.

(By unanimous consent, Mr. EDGAR was allowed to proceed for 1 additional minute.)

Mr. EDGAR. I appreciate the author of the amendment trying to defend his position.

In summary, I believe the gentleman's amendment allows for up to 40 cities to replace the national standards for industrial toxics with less stringent local standards which purport to achieve equal or more effective results. But EPA does not have the data to decide what is equal or more effective. Neither EPA nor the States have set water quality or sludge standards for most industrial toxics. In all likelihood, less cleanup means worse results.

Further, I beleive this amendment upsets the rules that took a decade to promulgate, just as enforcement of those rules starts.

And, finally, I believe this amendment gives those who violated past compliance deadlines a competitive advantage over those who installed the EPA-required controls.

We have a good bill here. I think it is a bill that has bipartisan support.

We worked very hard and very long on this legislation. I would urge my colleagues to reject this amendment, go with the committee bill, which I think is one of the best pieces of legislation we have had before us in the recent past.

Mr. GROTBERG. Mr. Chairman, I move to strike the requisite number of words, and I would like to associate myself with the remarks of the gentleman from Minnesota.

Mr. Chairman, all the reasons that the gentleman from Pennsylvania suggests that this bill should not be passed are the very ones that it should be passed.

Until and unless we do something to help municipalities and local governments work in their own way toward the modification and better doing of national mandates, we will have failed.

I have two villages in my district. This amendment will come too late to be of any service to them. But the legal fees, everything that goes on because of the national standard, with no flexibility, even varying from their own theme, let alone the final results, of the outflow and the effluence of the water is something that has bothered me for so long. I have even tried to come up with some concept where we do not fine other units of Government with money fines. We need a nonmonetary sanction so that we are not having taxpayers pay fines to recycle our taxpayers' money. Within a lot of this are the EPA sanctions, and many of them are perceived and not real, and the model of 40 cities, up to 40 cities and municipalities being able to demonstrate a new and creative way to meet the standards or surpass the Federal standards, but do it in their own way, certainly is a commentary on what I think local government is all about, and the skills, believe it or not, of most local governments on their pollution control and their earnestness and conformity are equal to or surpass many of those that are involved at the district, region or national level with EPA.

I would urge my colleagues to support the Stangeland amendment.

Mr. OBERSTAR. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment. The idea of pretreatment opt-out was a bad idea when it was first proposed in the days of Ann Gorsuch, when she was head of the Environmental Protection Agency, and, consistently, it is a bad idea today.

The Public Works and Transportation Committee has consistently opposed the concept of pretreatment opt-out. The Senate has consistently opposed it. The EPA, under direction of Mr. Ruckelshaus, opposed the concept of pretreatment opt-out, and I do not see any support from the current Administrator of EPA for this concept either.

The amendment will allow many industries to get away with weaker locally imposed limits than the national technology-based pretreatment standards. It would virtually eliminate enforcement against industrial dischargers who violate alternative pretreatment requirements by putting an intermediary, the local community between EPA and the industry. EPA would not be able to take Federal enforcement action against industries who are violating local program requirements.

It could rescind approval only of the local program, and that would be a drastic action which would be contested in court when the sewage treatment facility violates the law and not when the industrial discharger violates the law.

While the rescission process is dragging on, the plant would continue to pour additional toxics into the Nation's waters and into drinking supplies. It has taken us 10 years to get national pretreatment standards established. And now that those standards are in place is the wrong time for us to back off from industrial pretreatment.

Over 1,100 cities in this country have already received approval from EPA for pretreatment in compliance with Federal law. The amendment just proposed would drastically slow down compliance while cities fight for the right to get out of the pretreatment program. This is unnecessary tampering with an disruption of the national program of pollution abatement.

Sewage treatment plants now can get relief through removal credits. There is a system established in existing law. It has been working. We ought not to undermine it and defeat it.

These credits allow industry to meet local limits instead of national standards, but only where cleanup actually is taking place. There is no need for an amendment that would simply reward cities and industries that up to this time have resisted complying with EPA's pretreatment regulations.

This amendment, make no mistake about it, is a reward for polluters and a disincentive for those who have worked hard and spent money to comply with the law. It is a bad idea. It was bad when it was first proposed some 5 years ago, it is bad today, it is bad national pollution abatement policy, it will set us back, not move us forward, and it would do so under the wrong premise, under the guise of economic relief. I think we would be making a terrible mistake if this amendment should be approved.

Our committee is strongly opposed to it and always has been. We have had extensive testimony in opposition to the amendment, and I urge my colleagues to defeat it.

Mr. MOLINARI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendment offered by the gentleman from Minnesota. I think that a careful reading of the amendment would demonstrate that a lot of the concerns that have been raised by those who are opposing the amendment have been overstated.

We are talking about a demonstration program, first of all, not a permanent change. We are talking about a pretreatment program that has to be approved by the Administrator. It must show compliance with sections 301 and 302. The safeguards in the amendment with respect to implementation are such that I think it satisfies all of the concerns that have been raised in the past. Then it specifies, on page 3, that the system, if it is different from that required under section 307(b) of the act but which equally or more effectively prevents the discharge through such works of pollutants which interfere with, pass through, or otherwise are incompatible with such works or which impair current or planned sludge use or disposal, it could only then be considered.

And then it goes on to set forth one further safeguard, in that the Administrator, or the respective State, whichever the case it might be, has the right at such time in the future, if they believe that the owner of that publicly owned treatment work is not complying, can rescind such permanent modification and make additional modifications, if that be the case; so that we have so many safeguards in the amendment to ensure that the intent of the Clean Water Act is met, I think the gentleman's amendment passes muster and should be supported.

Mr. WISE. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the pretreatment amendment. I have studied it for the last 2 years, and quite frankly I liked it better last year when it was more experimental and only dealt, I believe, with 20 cities at the time. A lot of the reasons have been enumerated why I would be opposed to it. I would like to list some of the ones that I think are important. It is called the pretreatement opt-out. I think it can also be equally called the pretreatment playoffs. If you have a chemical plant—in my case, I have 20—in your district, and there are some 6,000 to 11,000, depending upon whom you talk to across the country, then you are going to be subject to this playoff, because, as this amendment says, there are 40 cities that might initially qualify.

But what happens for instance when that plant comes to the city council and says, or to the State Economic Development Authority and says, "You know, we are a marginal operation; the imports are hurting us; times have been tough, and we are going to have to think about locating to another facility, perhaps shutting down this operation, some part of it or all of it, and move to another facility where indeed we are permitted to opt out of the pretreatment.

"City X will give us this kind of benefit; city Y, you are not giving us this, and we are going to have to move." So you see this kind of playoff logically occurring.

Some cities will benefit, but yet I think this amendment would also hold a gun at the heads of many cities; many municipal water systems to spend extra money and try to reduce the cost for those industries.

There is another concern I have. What happens, and I have heard some explanation of it, although I still think it is unresolved, what happens, for instance, city Y is not working with this pretreatment opt out, and yet the EPA comes in and says you are not meeting the standards you should; the water is polluted. Now, at that point, what happens? Does city Y undertake those repairs? Does the industry then say "well, we never engaged in this pretreatment before, it is too expensive, perhaps we will have to move elsewhere."

I urge people to consider the ramifications of this amendment to your area because I think it goes a long way toward changing the policy. The gentleman from Minnesota [Mr. OBERSTAR], said we have engaged in a national goal, a national objective for 10 years, and was to create a certain standard of pretreatment. That standard is finally being adhered to. Now, what this Congress would be saying by adopting this amendment is, that for some, you do not have to reach that standard, and so you send a signal to everyone that indeed, we were not serious and that you can weaken it.

As I said, it may be an opt out to some; it is a playoff to me. I would urge the Members to consider carefully the ramifications to your district and urge you to oppose this amendment.

Mr. SNYDER. Mr. Chairman, I rise in support of the amendment.

(Mr. SNYDER asked and was given permission to revise and extend his remarks.)

Mr. SNYDER. Mr. Chairman, as you know, section 307 of the Clean Water Act requires industries to pretreat their wastes prior to being discharged into publicly owned treatment works. Under current law, this pretreatment must meet nationally mandated standards issued by the Environmental Protection Agency.

The Stangeland amendment would inject an element of flexibility into this process. Under the Stangeland amendment, the majority of communities in the United States would still be required to comply with the national categorical pretreatment standards.

However, communities that have developed their own pretreatment programs that are as good if not better than the Federal categorical plan would be allowed to implement their own plan rather than the Federal plan.

The basic issue involved in the Stangeland amendment is whether Congress and EPA know how to solve all the individual, site-specific problems for every sewage treatment plant in every city in the country.

I don't think that they do.

The current EPA Pretreatment Program, centered on national technology-based pretreatment standards, does not properly take into account whether all of the treatment required by the national standards is needed in every case. This can, and often does, result in costly, redundant and wasteful treatment by industry and publicly owned treatment works.

I believe that, as a general rule, local conditions are handled best by local entities developing locally responsive programs. Because many water quality problems are uniquely site specific and cannot readily be solved by uniform national standards, I believe that functioning equivalent, locally controlled pretreatment programs should be able to direct resources to particular site-specific problems rather than to treatment for treatment's sake.

Of course, some will argue that there shouldn't be any flexibility in the Federal law—that this is just a backdoor method to weaken the national standards. Well, I don't agree.

I believe that the Stangeland amendment has been carefully crafted and that it includes sufficient protections to insure that the environment will be adequately protected.

Let me enumerate some of the protections in the Stanglend amendment.

First, his amendment is not a blank check for local communities. Only 40 communities in the United States will be allowed to participate in this demonstration program.

Second, the pretreatment equivalency programs must be approved by the Environmental Protection Agency. Thus, in each and every case, EPA must make the determination that the local program will provide equal or better treatment than the national categorical program.

Third, before being approved for the equivalency program, the publicly owned treatment works will have to be achieving secondary treatment and will have to show it has adequate funding and resources—technical, legal, and administrative—to implement the equivalency program.

Fourth, a rigorous monitoring program would be required for every local system obtaining the authority provided. The monitoring is envisioned as going beyond current Federal law and would be specifically designed to advance the state of the art of biological monitoring and the development of toxicity data for receiving streams.

Fifth, the Stangeland amendment contains a sunset provision. The demonstration program will not continue beyond September 30, 1990, unless Congress specifically reauthorizes it.

Sixth, under the Stangeland amendment, EPA and the States are given ample authority to rescind or modify the approval for any local pretreatment equivalency program if it determines that the local program is not being carried out in accordance with the law.

And seventh, the proposal would not eliminate any existing enforcement authority. Both the local and State governments have undiminished enforcement authority over industrial users of a publicly owned treatment works through the existing provisions of the act. Federal and citizen enforcement is available through sections 309(f), 505(a) and (f), section 307(d) and EPA's general pretreatment regulations.

Mr. Chairman, I believe that these protections will insure that the flexibility provided by the Stangeland amendment will not be abused and that the environment will be adequately protected.

In closing, I would like to ask a simple question. Shouldn't locally developed programs that are creative, cost effective and improve water quality be allowed to move forward?

My answer is an emphatic "yes", and I hope the House feels likewise.

Mr. Chairman, I urge adoption of the Stangeland amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota [Mr. STANGELAND].

The question was taken; and the Chairman announced that the "noes" appeared to have it.

RECORDED VOTE

Mr. STANGELAND. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 167, noes 257, not voting 9, as follows:

[Roll No. 248]

AYES—167

Archer
Armey
Badham
Bartlett
Barton
Bateman
Bentley
Bereuter
Bilirakis
Bliley
Bonior (MI)
Boulter
Brown (CO)
Broyhill
Burton (IN)
Callahan
Campbell
Chappell
Chappie
Cheney
Clinger
Coats
Cobey
Coble
Coleman (MO)
Combest
Courter
Craig
Daniel
Dannemeyer
Daub
de la Garza
DeLay
Dickinson
DioGuardi
Dornan (CA)
Dreier
Duncan
Eckert (NY)
Edwards (OK)
Emerson
English
Evans (IA)
Fawell
Fiedler
Fields
Franklin
Frenzel
Gallo
Gekas
Gingrich
Goodling
Gradison
Grotberg
Gunderson
Hall, Ralph
Hammerschmidt
Hansen
Hartnett
Heftel
Hendon
Hiler
Hillis
Hopkins
Hubbard
Hunter
Hutto
Hyde
Ireland
Jacobs
Johnson
Kasich
Kemp
Kindness
Kramer
Lagomarsino
Latta
Leath (TX)
Lewis (CA)
Lewis (FL)
Lightfoot
Livingston
Lloyd
Loeffler
Lott
Lowery (CA)
Lujan
Lungren
Mack
Madigan
Marlenee
Martin (IL)
Martin (NY)
McCain
McCandless
McCollum
McEwen
McMillan
Meyers
Michel
Miller (OH)
Molinari
Mollohan
Monson
Montgomery
Moore
Moorhead
Morrison (WA)
Myers
Nichols
Nielson
O'Brien
Oxley
Packard
Parris
Pashayan
Porter
Price
Quillen
Ray
Ritter
Roberts
Rogers
Roth
Rowland (CT)
Rudd
Schaefer
Schuette
Schulze
Shelby
Shumway
Shuster
Siljander
Sisisky
Skeen
Slaughter
Smith (NE)
Smith (NH)
Smith, Denny
Smith, Robert
Snyder
Solomon
Spence
Stallings
Stangeland
Stenholm
Strang
Stratton
Stump
Sundquist
Sweeney
Swindall
Taylor
Thomas (CA)
Valentine
Vander Jagt
Vucanovich
Walker
Whitehurst
Whittaker
Williams
Wolf
Wortley
Wylie
Young (AK)
Young (FL)
Zschau

NOES—257

Ackerman
Addabbo
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Aspin
Atkins
AuCoin
Barnard
Barnes
Bates
Bedell
Beilenson
Bennett
Berman
Bevill
Biaggi
Boehlert
Boggs
Boland
Boner (TN)
Bonker
Borski
Bosco
Boucher
Boxer
Breaux
Brooks
Broomfield
Brown (CA)
Bruce
Bryant
Burton (CA)
Bustamante
Byron
Carney
Carper
Carr
Chandler
Clay
Coleman (TX)
Collins
Conte
Conyers
Cooper
Coughlin
Coyne
Crane
Crockett
Darden
Daschle
Davis
Dellums
Derrick
DeWine
Dicks
Dingell
Dixon
Donnelly
Dorgan (ND)
Dowdy
Durbin
Dwyer
Dymally
Dyson
Early
Eckart (OH)
Edgar
Edwards (CA)
Erdreich
Evans (IL)
Fascell
Fazio
Feighan
Fish
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Fowler
Frank
Frost
Fuqua
Garcia
Gaydos
Gejdenson
Gephardt
Gibbons
Gilman
Glickman
Gonzalez
Gordon
Gray (PA)
Green
Gregg
Guarini
Hall (OH)
Hamilton
Hawkins
Hayes
Henry
Hertel
Holt
Horton
Howard
Hoyer
Hughes
Jeffords
Jenkins
Jones (NC)
Jones (OK)
Jones (TN)
Kanjorski
Kaptur
Kastenmeier
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Kostmayer
LaFalce
Leach (IA)
Lehman (CA)
Lehman (FL)
Leland
Lent
Levin (MI)
Levine (CA)
Lipinski
Long
Lowry (WA)
Luken
Lundine
MacKay
Manton
Markey
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCurdy
McDade
McGrath
McHugh
McKernan
McKinney
Mikulski
Miller (CA)
Miller (WA)
Mineta
Mitchell
Moakley
Moody
Morrison (CT)
Mrazek
Murphy
Murtha
Natcher
Neal
Nelson
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens
Panetta
Pease
Penny
Pepper
Perkins
Petri
Pickle
Pursell
Rahall
Rangel
Regula
Reid
Richardson
Ridge
Rinaldo
Robinson
Rodino
Roe
Roemer
Rose
Rostenkowski
Roukema
Rowland (GA)
Roybal
Russo
Sabo
Savage
Saxton
Scheuer
Schroeder
Schumer
Seiberling
Sensenbrenner
Sharp
Shaw
Sikorski
Skelton
Slattery
Smith (FL)
Smith (IA)
Smith (NJ)
Snowe
Solarz
Spratt
St Germain
Staggers
Stark
Stokes
Studds
Swift
Synar
Tallon
Tauke
Tauzin
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Vento
Visclosky
Volkmer
Walgren
Watkins
Waxman
Weaver
Weber
Weiss
Wheat
Whitley
Whitten
Wilson
Wirth
Wise
Wolpe
Wright
Wyden
Yates
Yatron
Young (MO)

NOT VOTING—9

Coelho
Downey
Gray (IL)
Hatcher
Hefner
Huckaby
Lantos
Mica
Schneider

☐ 1420

Messrs. ROEMER, GARCIA, LENT, and BEDELL changed their votes from "aye" to "no."

Ms. FIEDLER changed her vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. DELAY

Mr. DELAY. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. DELAY: Page 83, after line 23, insert the following new section:

SEC. 27. NATIONWIDE GENERAL DREDGE AND FILL PERMITS FOR CERTAIN NAVIGABLE WATERS.

Section 404(e) is amended by adding at the end thereof the following new paragraph:

"(3) Subject to the provisions of this subsection, the Secretary may issue, on a State, regional, or nationwide basis, a general permit for the discharge of dredged and fill material into all navigable waters, except those waters which—

"(A) are used,

"(B) are susceptible to use in their natural condition or by reasonable improvements, or

"(C) have historically been used, as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark."

Redesignate the subsequent sections of the bill accordingly.

Page 2, after line 8 and after the item relating to section 26 insert the following and redesignate the subsequent items in the table of contents accordingly:

Sec. 27. Nationwide general dredge and fill permits for certain navigable waters.

Mr. DELAY (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

(Mr. DELAY asked and was given permission to revise and extend his remarks.)

Mr. DELAY. Mr. Chairman, I had prepared an amendment which was intended to allow for general dredge and fill permits to be issued by the Corps of Engineers for discharge into navigable waters except those waters which are:

1. Used.

2. Are susceptible to use in their natural condition or by reasonable improvements, or

3. Have historically been used, as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean higher water mark.

This amendment would be subject to all other provisions of subsection E. That means that the Corps of Engineers must determine that issuing such a permit will only have minimal adverse effect on the environment and may determine that a particular application may be better served by an individual permit.

In essence, my amendment would have allowed general permits for all waters but "traditionally navigable waters."

I recognize that this is a very controversial amendment and, therefore, I will be prepared to withdraw my amendment after making a brief statement and colloquy on this issue.

Let me give you some of the background of how our present law came into being and why it may need to be changed.

In April 1974 the corps published regulations to implement the section 404 permit program. These regulations limited the program to the same waters that were being regulated under the River and Harbor Act of 1899, that is, navigable waters as traditionally defined.

On March 25, 1975, the District Court for the District of Columbia decided that "navigable waters" meant "all waters of the United States" and ordered the Corps of Engineers to publish revised regulations expanding the scope of its section 404 permit program to cover all the waters of the United States, and away we went. In response to the court's directive, the corps took the original 250 words of section 404 and puffed them into about 35,000 words of new regulations. These new regulations expanded the definition of "navigable waters" to include every lake and pond in the country with a surface area of 5 acres or more and every river, stream, and creek in the country up to its "headwaters," which is defined as the point "above which the flow is normally less than 5 cubic feet per second." The upshot was that a Federal section 404 permit would be required for discharge of dredged or fill material into virtually any stream, lake, or pond or "wet spot" in the country. This seemed far afield from the stated objective of Public Law 92-500 to "restore and maintain the chemical, physical and biological integrity of the Nation's waters." And it certainly did not promise much in the way of a "drastic minimization of paperwork * * * and the best use of available manpower and funds * * *."

Thus from the tiny acorn of section 404 a mighty oak of Federal bureaucratic intervention into State and local affairs has grown. The Corp of Engineers is placed in the position of being able to determine whether it is in the public interest to allow any physical activity of almost any size or kind on virtually any stream, lake, pond, or wetland for almost any reason, whether or not that reason has anything to do with water quality and without regard to private property rights or the rights of other levels of Government to provide for the needs of their citizens.

The paperwork, expense, and delay generated by the process I have described is enormous. The bottom line to all this is that over half of the 12,000 to 14,000 applications for 404 permits are "mom and pop" outfits, people who just want to build a boatdock or add on to their house. They usually only apply for one permit in their lifetime and they are total novices compared to some companies who have specialized counsel for these matters. We set these people adrift in a bureaucratic sea of confusion and that is my major concern.

I know that now the corps is under attack in the other body for the limited administrative and regulatory changes they have made to relieve the majority of small permit applicants. I would hate to see the necessity for legislation, and the only reason I offered this amendment was to have the opportunity to engage in a colloquy with the leadership of my Public Works Committee on this matter. I would be happy to withdraw this amendment after that time.

□ 1430

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. DELAY. I am glad to yield to the gentleman from Kentucky.

(Mr. SNYDER asked and was given permission to revise and extend his remarks.)

Mr. SNYDER. Mr. Chairman, I am very glad that the gentleman from Texas [Mr. DELAY] has taken this opportunity to raise this concern about overregulation of the regular "folks" in our country—and that he has done so in the spirit of cooperation and bipartisanship on this committee.

In recent years, we have seen a deterioration in the corps efficient handling of permitting because of the increasing amount of studies, restudies, evaluations, and reevaluations required by the increasingly complex guidelines and regulations under which it must work. Even more objectionable, and probably more serious in its long-term implications, than this self-paralysis of Federal water resources programs is the developing trend toward increased and unwarranted Federal interference with the efforts of State and local governments to carry out their own programs for meeting the needs of their citizens and in affairs of the citizens themselves.

On October, 18, 1972, Congress enacted the Federal Water Pollution Control Act Amendments of 1972 with the declared objective being "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Section 101(f) states that: "It is the national policy that to the maximum extent possible the procedures utilized for implementing this act shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of governments."

I agree with that statement and I support your efforts to insure we in Congress adhere to those guidelines.

Mr. DELAY. Mr. Chairman, I certainly thank the distinguished ranking minority leader of the Public Works and Transportation Committee.

Mr. SNYDER. Mr. Chairman, I thank the gentleman.

Mr. DELAY. Mr. Chairman, I ask unanimous consent to withdraw my amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

AMENDMENTS OFFERED BY MR. KANJORSKI

Mr. KANJORSKI. Mr. Chairman, I offer two amendments, and I ask unanimous consent that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The CHAIRMAN. The Clerk will report the amendments.

The Clerk read as follows:

Amendments offered by Mr. KANJORSKI: On page 34, line 12 insert a new subparagraph (c) as follows:

(c) PROJECTS UNDER JUDICIAL ORDER.--Section 202(a)(1) is amended by adding at the end thereof the following:

"Notwithstanding the first sentence of this paragraph, in the case of the Wyoming Valley Sanitary Authority project mandated by judicial order under a proceeding begun prior to October 1, 1984, such project shall be eligible for grants at 75 percent of the cost of construction thereof."

Redesignate subsequent sections accordingly.

On page 105, after line 12, insert:

(E) PRIORITY FOR COURT ORDERED PROJECTS.—The Commonwealth of Pennsylvania, from the sums allocated to it under this Act, shall give first priority to the Wyoming Valley Sanitary Authority Secondary Treatment project mandated under federal court order, regardless of the date of start of construction made pursuant to the court order.

Mr. KANJORSKI (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

(Mr. KANJORSKI asked and was given permission to revise and extend his remarks.)

Mr. KANJORSKI. Mr. Chairman, the Wyoming Valley Sanitary Authority, located in my congressional district, is currently under a Federal court order to upgrade its primary sewage treatment system to a secondary system. This court order is the result of litigation going back as far as 1981, and project planning over the last 5 years. With the approval of the Federal district court in Scranton, the EPA and the authority entered into a consent agreement effective June 23, 1985.

Under this court order the sanitary authority is required to upgrade its primary sewage treatment system to a secondary system even though the authority has not yet moved up high enough on the State of Pennsylvania's priority list to obtain Federal matching funds. If the authority complies with the court order it may never receive Federal matching funds because current law prevents projects from receiving matching funds retroactively. If the authority waits for approval of matching Federal funds it will be in contempt of court.

These amendments allow the authority to comply with the Federal court order while at the same time receiving matching Federal funds.

Amendment No. 1 is modeled after the existing language in section 12(b) of the committee bill which provides a 75-percent Federal match for projects begun prior to October 1, 1984, on which construction has been halted due to a judicial injunction. Amendment No. 1 provides a similar 75-percent Federal match for the Wyoming Valley Sanitary Authority project mandated by a judicial order under proceedings begun prior to October 1, 1984.

Amendment No. 2 provides that from the funds allocated to the Commonwealth of Pennsylvania under the act, the State shall give first priority to the Wyoming Valley Sanitary Authority Secondary Treatment Project mandated under Federal court order, regardless of the date that construction on the project actually begins. Thus the full project will be eligible for Federal matching funds even if construction begins as mandated by the court order prior to the actual award of Federal matching funds.

Mr. Chairman, this amendment does not increase Federal funding, nor does it alter the allocation of funds to the States. It merely states that from the funds allocated to the Commonwealth of Pennsylvania under the act, first priority shall go to the Wyoming Valley Sanitary Authority's Secondary Treatment Project.

I also want to make it clear, Mr. Chairman, that these amendments cover the full $35 million cost of the project including the upgrading and improvement of all pumping stations which are integral parts of the overall project.

Mr. Chairman, I want to congratulate Chairmen Roe and Howard, and ranking members Snyder and Stangeland for producing an excellent clean water bill, and for their support of these amendments. I look forward to working with them to improve the quality of our Nation's water supply and I yield to the distinguished and hard working gentleman from New Jersey, the chairman of the subcommittee.

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. KANJORSKI. Yes, I yield to the gentleman from New Jersey.

Mr. ROE. Mr. Chairman, we have reviewed this very important amendment having to do with the Wyoming Valley, specifically in Pennsylvania. It does not affect any other substance of the bill, and I think the cause is just.

Mr. Chairman, the committee on this side has no objection to the gentleman's amendments en bloc.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. KANJORSKI. Yes, I certainly do.

Mr. SNYDER. Mr. Chairman, we are pleased to accept the amendment.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Pennsylvania [Mr. Kanjorski].

The amendments were agreed to.

AMENDMENT OFFERED BY MR. MILLER OF CALIFORNIA

Mr. MILLER of California. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Miller of California: Section 31 needs to be amended to read as follows:

Sec. 31. Definition of Point Source.

For purpose of the Federal Water Pollution Control Act, the term "point source" includes a landfill leachate collection system.

Mr. MILLER of California (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. MILLER of California. Mr. Chairman, this is a technical amendment that deals with the leachate collection systems, which was an overly broad definition by the committee.

I have discussed this amendment both with the majority and the minority to cure this problem.

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. MILLER of California. I yield to the gentleman from New Jersey.

Mr. ROE. Mr. Chairman, the amendment is a fine amendment. It is a technical amendment and one that is important to the bill.

Mr. Chairman, this side has no objection.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. MILLER of California. Yes, I yield to the gentleman from Kentucky.

Mr. SNYDER. Mr. Chairman, we have no objection on this side; however, the gentleman from New York does intend to speak to the issue.

Mr. MOLINARI. Mr. Chairman, will the genleman yield?

Mr. MILLER of California. I yield to the gentleman from New York.

Mr. MOLINARI. Mr. Chairman, I just want to say that it was my amendment that defined the leachate collection system. It was intended to deal with the landfill issue.

I have no objection whatsoever to amending that provision.

Mr. MILLER of California. Mr. Chairman, I appreciate that, and I ask for an "aye" vote on the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. Miller].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. KLECZKA

Mr. KLECZKA. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Kleczka: In the matter inserted on page 100, after line 16, and designated as "Sec. 36. Great Lakes International Coordination Office.", redesignate subsection (g) as subsection (i) and insert after subsection (f) the following new subsections:

(g) Great Lakes Research.—

(1) Establishment of research office.—There is established within the National Oceanic and Atmospheric Administration the Great Lakes Research Office (hereinafter in this section referred to as the "Research Office").

(2) Identification of issues.—The Research Office shall identify issues relating to the Great Lakes resources on which research is needed. The Research Office shall submit a report to Congress on such issues before the end of each fiscal year which shall identify any changes in the Great Lakes system with respect to such issues.

(3) Inventory.—The Research Office shall identify and inventory Federal, State, university, and tribal environmental research programs (and, to the extent feasible, those of private organizations and other nations) relating to the Great Lakes system, and shall update that inventory every four years.

(4) Research exchange.—The Research Office shall establish a Great Lakes research exchange for the purpose of facilitating the rapid identification, acquisition, retrieval, dissemination, and use of information concerning research projects which are on-going or completed and which affect the Great Lakes system.

(5) Research program.—The Research Office shall develop, in cooperation with the Coordination Office, a comprehensive environmental research program and data base for the Great Lakes system. The data case shall include, but not be limited to, data relating to water quality, fisheries, and biota.

(6) Monitoring.—The Research Office shall conduct, through the Great Lakes Environmental Research Laboratory, the National Sea Grant College program, other Federal laboratories, and the private sector, appropriate research and monitoring activities which address priority issues and current needs relating to the Great Lakes.

(7) Location.—The Research Office shall be located in a Great Lakes State.

(h) Research and Management Coordination.—

(1) Joint plan.—Before October 1 of each year, the Coordination Office and the Research Office shall prepare a joint research plan for the fiscal year which begins the following calendar year.

(2) Contents of plan.—Each plan prepared under paragraph (1) shall—

(A) identify all proposed research dedicated to activities conducted under the Great Lakes Water Quality Agreement of 1978;

(B) include the Agency's assessment of priorities for research needed to fulfill the terms of such Agreement; and

(C) identify all proposed research that may be used to develop a comprehensive environmental data base for the Great Lakes system and establish priorities for development of such data base.

In subsection (i) (as redesignated by preceding amendment) of such matter, add the following new paragraph:

(3) For Great Lakes Research.—There are authorized to be appropriated for purposes of carrying out subsections (g) and (h) not to exceed—

(A) $2,000,000 per fiscal year for fiscal years 1986 and 1987; and

(B) $3,000,000 per fiscal year for fiscal years 1988, 1989, and 1990.

Mr. KLECZKA (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Wisconsin [Mr. Kleczka]?

Mr. SNYDER. Mr. Chairman, until we get a copy, I will have to object.

The CHAIRMAN. Objection is heard.

The Clerk will read.

The Clerk continued the reading of the amendment.

Mr. SNYDER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record. We now have a copy.

The CHAIRMAN. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

Mr. KLECZKA. Mr. Chairman, on behalf of the gentleman from Michigan [Mr. Hertel], the gentleman from New York [Mr. Nowak], the gentleman from Ohio [Mr. Eckart], and myself, I am offering a brief but important amendment to strengthen our understanding and protection of the Great Lakes.

The amendment calls for the establishment of a Great Lakes Research Office within NOAA, the National Oceanagraphic and Atmospheric Administration. Currently, considerable research on the Great Lakes is being performed by many bodies, including the EPA, NOAA, universities, tribal, and environmental groups. These efforts are frustrated, however, by a lack of coordination and communication.

The problem of coordinating Great Lakes research efforts was clearly pointed out in a 1982 study by the General Accounting Office, entitled "A More Comprehensive Approach Is Needed to Clean Up the Great Lakes." The report specifically recommended that Congress establish a Great Lakes Research Office within NOAA to play a coordinating role.

Also in 1982, legislation was approved by the House Science and Technology and Merchant Marine and Fisheries Committees which would have established a Great Lakes Research Office within NOAA. Unfortunately, this bill never became law.

My current proposal is similar to the 1982 bill, as well as to a component of the Great Lakes Management and Research Act of 1985, H.R. 2744, of which I was a cosponsor. According to my amendment, the new Great Lakes Research Office would:

Identify research needs on the lakes in an annual report to Congress;

Inventory existing research programs concerning the lakes;

Establish and facilitate a research exchange program among participanting institutions; and

Develop a comprehensive environmental research program and database for the lakes.

All these activities would be conducted in cooperation with the appropriate authorities within EPA.

□ 1440

I should add that my amendment stipulates that the Research Office be located in a Great Lakes State. While I assume that the final siting decison will be made by NOAA, I would like to point out that my own Wisconsin district is host to one of the finest of the Great Lakes research facilities, the Center for Great Lakes Studies at the University of Wisconsin, Milwaukee. This center is the only major lakes research facility located right on the water, and I believe it would make an excellent choice for the new research office.

I realize there may be some concern over cost, and I want to stress that the cost is modest. My amendment would authorize $2 million per year for fiscal 1986 and 1987, and $3 million per year for fiscal 1987-1990. According to the GAO Report, there is currently such a lack of coordination among Great Lakes researchers that I am sure this research office would pay for itself. In addition, the other body has already agreed to a similar program and similar funding for the research office. I am confident that, with the support of the chairman and ranking minority member of the Water Resources Subcommittee, we can make a fine start today in ensuring the coordinated managment of the Great Lakes, our Nation's most precious water resource.

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. KLECZKA. I yield to the gentleman from New Jersey.

Mr. ROE. Mr. Chairman, again we have reviewed this amendment. We have worked very closely with the distinguished member of our committee, the gentleman from New York [Mr. NOWAK], and yourself and others, and we have no objection on this side to the amendment.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. KLECZKA. I yield to the gentleman from Kentucky.

Mr. SNYDER. Mr. Chairman, we have no problem and are prepared to accept the amendment.

Mr. KLECZKA. I thank the chairman, the gentleman from New Jersey [Mr. ROE], and the ranking minority member, the gentleman from Kentucky [Mr. SNYDER], and the staff for their help with this amendment.

Mr. NOWAK. Mr. Chairman, will the gentleman yield?

Mr. KLECZKA. I yield to the gentleman from New York.

(Mr. NOWAK asked and was given permission to revise and extend his remarks.)

Mr. NOWAK. Mr. Chairman, I rise in support of the amendment offered by my colleague from Wisconsin, JERRY KLECZKA. This amendment establishes an important role for the Natonal Oceanic Atmospheric Administration in coordinating Great Lakes research activities with the Environmental Protection Agency.

Earlier today we adopted a package of amendments offered by the distinguished chairman of the Public Works Committee which included an amendment which I sponsored providing a comprehensive research and management framework for cleaning up the Great Lakes. As a representative from one of the Great Lakes States, I am deeply concerned about the continuing preservation and protection of the environmental quality and resources of the Great Lakes. Despite years of cleanup efforts the United States and Canada have failed to adequately protect this valuable resource. I recently had the pleasure of traveling to Michigan with several of our colleagues to meet with Canadian Members of Parliament to discuss the U.S.-Canada Water Quality Agreement. I am pleased to report that the Great Lakes initiative embodied in H.R. 8 met with uniformly favorable reviews. My amendment represents a serious effort to target spending within the EPA to provide support for the ambitious goals of the Water Quality Agreement. Briefly, my amendment does the following:

Provides explicit recognition of the Water Quality Agreement by the U.S. Congress for the first time.

Designates EPA's Great Lakes Program Office as the lead agency responsible for meeting the goals of the agreement and it provides $60 million during the next 5 years to upgrade this Office. That $12 million-per-year average is more than twice as much as this Office has received in any single year recently.

Directs the Great Lakes Program Office to work with Federal/State agencies to develop a management strategy to meet the goals of the Water Quality Agreement.

Requires the establishment of a Toxics Monitoring and Surveillance Network for the Great Lakes. Recommending that EPA begin studies on the feasibility of toxic sediment removal at five specific sites in the Great Lakes—Saginaw Bay, MI; Sheboygan Harbor, WI; Grand Calumet River, IN; Ashtabula River, OH; Buffalo River, NY.

Requires periodic reports to Congress regarding progress made in implementing the goals of the Water Quality Agreement.

The Great Lakes constituting the world's largest expanse of fresh water have long been recognized as a ciritical economic and environmental resource for the Nation. Thanks to the Clean Water Act and the wastewater treatment program, we have begun to see hopeful signs of improvement in the lakes' water quality. The control of municipal effluents has at least checked phosphorus pollution in the lakes; the algae growth that was choking off the life in Lake Erie has begun to subside, and fish have returned to parts of the shoreline. But the job is not done, we must continue our efforts to strengthen the environmental protection of the Great Lakes. I am pleased to have been a part of developing this important legislation and hope my colleagues will support its enactment and give careful consideration to this proposal.

Mr. HERTEL of Michigan. Mr. Chairman, will the gentleman yield?

Mr. KLECZKA. I yield to the gentleman from Michigan.

(Mr. HERTEL of Michigan asked and was given permission to revise and extend his remarks.)

Mr. HERTEL of Michigan. Mr. Chairman, I want to thank the gentleman from Wisconsin, for offering this amendment today. As the gentleman has mentioned, similar language to this amendment has already been included by the other body in parallel authorization. That point is important. This body has passed virtually identical language in the last three Congresses. Until now, the other body has failed to act on this language.

I salute the foresight the House has consistently shown on Great Lakes issues. This is not an isolated instance of promoting regional interests. This amendment addresses the problem of extremely scarce resources for Great Lakes research by promoting cooperation and coordination of research by State and Federal agencies to utilize research dollars in a way that will produce the maximum useable data.

Equally important, it does not create another bureaucracy which can eat up research dollars in red tape. This amendment establishes a research office within NOAA at existing NOAA facilities on the Great Lakes. By doing this, coordination can be improved because researchers, their problems, and the decision makers can be in closer proximity and priorities can be swiftly evaluated. In the case of a serious environmental contamination, the time saved can be critical with respect to the amount of damage the fragile ecosystems of the Lakes might sustain. To the taxpayer, it means that tax dollars are spent more effectively and with greater and faster results.

The Great Lakes are America's fourth coast line, yet they are unique because they are entirely fresh water. The vast amount of fresh water contained in the Lakes makes them a more fragile ecosystem than their saline counterparts. In many ways, the Great Lakes have led the way in aquatic research which has had direct and immediate applications on oceanographic and saline ecological research. Problems first identified by Great Lakes researchers, like the problem with PCB contamination, have sounded the warning for marine researchers. It is in that spirit today's amendment is offered. It is our hope that the coordinator of Great Lakes management and research will become a model for the Nation and the world to emulate. We can set the example of protecting our priceless resources and still prudently conserve our tax dollars. I ask that the House support this amendment offered by the gentleman from Wisconsin and myself.

Those of us who have worked on this issue for the past 5 years appreciate the thoughtful concern the House has always given to this vital issue.

STATE OF MICHIGAN,
OFFICE OF THE GOVERNOR,
Lansing, MI, June 18, 1985.

Hon. ROBERT ROE,
Chairman, Water Resources Subcommittee, Committee on Public Works and Transportation, House of Representatives, Washington DC.

DEAR BOB: I am writing to express my support for amending the Clean Water Act to prohibit "backsliding" from existing wastewater discharge permit effluent limits. I am particularly concerned about the potential adverse impacts on Great Lakes water quality of relaxing permit limits and allowing increased pollutant discharges by existing dischargers.

The Great Lakes are the repository of many different persistent, bioaccumulative toxic pollutants. Once in the Lakes, these pollutants remain for generations, contaminating the water, the fish, and other aquatic organisms. Analyzing an individual discharger's effluent at the point of discharge to justify relaxing permit limits ignores the cumulative impact of all discharges of these pollutants. Therefore, as a mimimum control measure, dischargers should be required to continue to meet existing permit limits even if water quality in the immediate vicinity of the discharge meets or exceeds minimum standards. Otherwise, the Great Lakes states (and others) will face competitive pressures to retain industry by giving away water quality improvements to existing dischargers.

Since many toxic pollutants adhere to solids and other "conventional" pollutants found in wastewater, I believe that the prohibition against backsliding should extend to these pollutants as well. Relaxed permit limits for conventional pollutants should be allowed only after the individual toxic pollutants of concern for a particular discharger have been identified and specifically limited in the permit.

Therefore, I urge you to support amending H.R. 8 to prohibit backsliding from permit limits for persistent, bioaccumulative toxic pollutants, and to allow backsliding from conventional pollutant limits only where the relationship with toxic pollutants in the particular discharge is understood and the toxic pollutants of concern are specifically limited in the permit.

Thank you for your assistance. If you have any further questions concerning my position, please feel free to contact me or Tom Martin of my staff.

Sincerely,

James J. Blanchard,
Governor.

Mr. KLECZKA. Mr. Chairman, I thank the gentleman from Massachusetts [Mr. Conte] for allowing a junior member to precede him today, and I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Wisconsin [Mr. Kleczka].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. CONTE

Mr. CONTE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Conte: Page 113, after line 13, insert the following new title:

TITLE II—ACID DEPOSITION CONTROL

SECTION 1. SHORT TITLE.

This title may be cited as the "Water Quality Improvement and Acid Deposition Reduction Act of 1985".

SEC. 2. PURPOSE.

The purpose of this Act is to improve water quality, protect human health and preserve aquatic resources in the United States by reducing the threat of acid deposition.

Subtitle I—Acid Deposition Control and Assistance Program

SEC. 101. AMENDMENT OF CLEAN AIR ACT.

Title I of the Clean Air Act is amended by adding the following new part at the end thereof:

"PART E—ACID DEPOSITION CONTROL

"Subpart 1—General Provisions

"SEC. 181. PURPOSE OF PART.

"The purpose of this part is to decrease sulfur dioxide emissions in the 48 contiguous States by requiring certain electric utility plants and other sources to reduce their rates of sulfur dioxide emissions. The reduced rates shall be rates which (if achieved by those sources in the emissions baseline year) would have resulted in total emissions from such sources 12,000,000 tons below the actual total of sulfur dioxide which those sources emitted in the emissions baseline year. The reduction is to be achieved within 10 years after the date of the enactment of this part. Such reduction shall be achieved through—

"(1) a program under subpart 2 consisting of direct federally mandated emission limitations for 50 of the largest emitters of sulfur dioxide; and

"(2) a program under subpart 3 consisting of State plans to provide for such reductions in the emission rates of other existing sources as may be necessary to achieve the remaining portion of such 12,000,000 ton reduction.

90 percent of the capital costs of continuous emission control technology used for the purpose of the program under subpart 1 shall be funded through a fee on the generation of electric energy as provided in subpart 4. Such fee shall also be used to provide revenue to the States to carry out the program under subpart 2.

"SEC. 182. CERTAIN ACTIVITIES NOT AFFECTED.

"Nothing in this part shall be construed to—

"(1) prevent the construction or modification of any electric utility unit or any other new source of sulfur dioxide; or

"(2) prevent any oil or gas fired electric utility unit or other oil or gas fired source from changing the fuel which such unit or other source used during the baseline year;

"(3) prevent any existing electric utility plant or any other existing stationary source of sulfur dioxide from at any time increasing rates of production or operation above baseline year levels;

"(4) require any State to reduce emissions under subpart 2 of this part to take into account emissions increases attributable to the construction, modification, or increased utilization of the units or sources referred to in paragraphs (1), (2), and (3); or

"(5) require any State to reduce emissions under subpart 2 of this part to take account of emissions increases attributable to a change in fuel at any existing source of sulfur dioxide which converts from gas as a primary fuel to oil or coal or which converts from oil as a primary fuel to coal.

"SEC. 183. DEFINITIONS.

"As used in this part—

"(1) The terms 'new' and 'modified' when used with respect to an electric utility unit or other source means an electric utility unit or other source which commenced construction (or modification) after December 31, 1980, and which is subject to new source performance standards for sulfur dioxide under section 111.

"(2) The term 'commenced' when used with respect to construction or modification has the same meaning as when used in section 111.

"(3) The term 'fossil fuel fired electric utility generating plant' means all of the fossil fuel fired electric utility steam generating units owned or operated by an electric utility which are located on one or more contiguous or adjacent properties.

"(4) The terms 'steam generating unit', 'electric utility', and 'fossil fuel' have the same meanings as provided in regulations under section 111 applicable to electric utility steam generating units for which construction is commenced after September 18, 1978 (40 CFR 60.41a), except that the term 'steam generating unit' shall include only those steam generating units which are capable of combusting more than 50 million Btu/hour heat input of fossil fuel (either alone or in combination with any other fuel).

"(5) The term 'Btu' means a British thermal unit.

"(6) The term 'technological system of continuous emission reduction' has the meaning provided by section 111(a)(7).

"(7) The term 'sulfur dioxide' when used with respect to emissions means total sulfur emissions expressed as sulfur dioxide emissions.

"(8) The term 'baseline year' means the calendar year 1980, except that in the case of—

"(A) any fossil fuel fired steam generating unit which is not part of an electric utility generating plant; or

"(B) any stationary source of industrial process emissions,

the Administrator may designate a subsequent calendar year as the baseline year if he determines that reasonably reliable data is available for that year with respect to the actual sulfur dioxide emission rates of the unit or source involved.

"(9) The term 'stationary source of industrial process emissions' means any major stationary source in one of the following categories or in any other category of major stationary sources which the Administrator determines, by rule, to contribute significantly to concentrations of sulfur dioxide in any region of the 48 contiguous States: nonferrous smelters, petroleum refineries, Portland Cement plants, natural gas plants, iron and steel mills, sulfuric acid plants, kraft pulp mills.

"SEC. 184. RELATIONSHIP TO OTHER REQUIREMENTS.

"Nothing in this part shall be construed to affect or impair the requirements of section 110 (or of any applicable implementation plan) or of any other section of this Act. Any stationary source which is subject to any such requirements may also be subject to additional requirements under this part.

"Subpart 2—Retrofit Technology for 50 Facilities

"SEC. 185. FEDERALLY MANDATED EMISSION REDUCTIONS.

"(a) Identification of High Emission Electric Utility Plants.—The Administrator shall identify each fossil fuel fired electric utility generating plant which emitted sulfur dioxide during the calendar year 1980 at an annual average rate equal to or in excess of 3 pounds per million Btu.

"(b) List of 50 Plants.—

"(1) Initial publication.—Not later than 2 months after the date of the enactment of this part, the Administrator shall publish in the Federal Register a list of the 50 plants among those identified under subsection (a) which have the largest total emissions of sulfur dioxide during the calendar year 1980 and shall notify the owner or operator of each plant on such list.

"(2) Final publication.—Not later than 4 months after the date of enactment of this part, and after notice and opportunity for comment, the Administrator shall promulgate, and publish in the Federal Register, a final list of the 50 plants among those identified under paragraph (1) which the Administrator determines had the largest total emissions of sulfur dioxide during the calendar year 1980.

"(c) Substitution.—

"(1) Application.—The owner or operator of any plant included on the final list under paragraph (2) of subsection (b) and the owner or operator of any other fossil fuel fired electric utility generating plant located in the same State may submit an application to the Administrator for the substitution of one or more fossil fuel fired steam generating units of such other fossil fuel fired electric utility generating plant for a unit of the plant included on such list. If an owner or operator of a plant included on the final list under subsection (b)(2) owns one or more other fossil fuel fired electric utility plants in the same State, he may submit an application under this paragraph for such a substitution. An application for substitution under this paragraph shall be submitted not later than 18 months after the date of the enactment of this part.

"(2) Approval.—A substitution of units may be approved by the Administrator under this subsection only if the Administrator determines that—

"(A) the total emissions of the substitute unit during the calendar year 1980 were equal to or greater than the total emissions of the original unit; and

"(B) the substitute unit emitted sulfur dioxide during the calendar year 1980 at an annual average rate equal to or greater than 3 pounds per million Btu.

"(3) Compliance by exempted units with certain NSPS.—

"(A) Compliance with NSPS if operation extends beyond normal useful life.—In any case in which—

"(i) a substitute unit has been approved under this subsection for any unit of a plant, and

"(ii) the normal useful life of such unit of the plant will expire before the date 10 years after the date of approval of such substitution,

the Administrator shall require that during any operation of such unit after the expiration of such useful life, the unit shall comply with the standards of performance applicable under section 111 to electric utility steam generating units which commenced construction after September 18, 1978.

"(B) Normal useful life.—For purposes of this paragraph, the normal useful life of a unit for which a substitute has been approved shall be determined by the Administrator at the time of approval of the substitution.

"(C) Enforcement.—The requirement established under this paragraph shall be treated as a requirement of section 111 and enforced in the same manner and subject to the same penalties and procedures as are applicable to the enforcement of the requirements of section 111.

"(d) Emission Limitations.—

"(1) For electric utility generating plants.—Except as provided in paragraph (3), each compliance schedule under this section shall provide that—

"(A) a technological system of continuous emission reduction shall be used for each steam generating unit in the fossil fuel fired electric utility generating plant concerned (other than a unit for which a substitute has been approved under subsection (a)(4)), and

"(B) sulfur dioxide emissions from such plant (excluding each unit for which a substitute has been approved under subsection (a)(4)) for the calendar year 1995 and for each calendar year thereafter shall not exceed—

"(i) 1.2 pounds per million Btu heat input and 10 percent of the total annual sulfur dioxide emissions during the calendar 1980 (90-percent reduction), or ....

"(ii) 0.6 pounds per million Btu and 30 percent of the total annual sulfur dioxide emissions during the calendar 1980 (70-percent reduction).

"(2) Determination of compliance.—Compliance by the plant with such emission limitation shall be determined in the same manner as provided for determination of compliance with regulations under section 111 applicable to electric utility steam generating units for which construction is commenced after September 18, 1978, except that (A) such regulations shall be applied on a plantwide basis (including all fossil fuel fired electric utility units which comprise the plant other than those units for which a substitute has been approved under subsection (a)(4)) and (B) compliance with the 1.2 pounds per million Btu and 0.6 pound per million Btu rates set forth in clauses (i) and (ii) shall be determined on the basis of average annual emissions of the plant in lieu of the 30-day rolling average which is applicable to each steam generating unit under such regulations.

"(3) Substitute units.—In the case of a substitute unit approved under subsection (c), each compliance schedule under this section shall provide that—

"(A) a technological system of continuous emission reduction shall be used for the unit, and

"(B) sulfur dioxide emissions from such unit for the calendar year 1995 and for each calendar year thereafter shall not exceed—

"(i) 1.2 pounds per million Btu heat input and 10 percent of the total annual sulfur dioxide emissions during the calendar 1980 (90-percent reduction), or

"(ii) 0.6 pounds per million Btu and 30 percent of the total annual sulfur dioxide emissions during the calendar 1980 (70-percent reduction).

Compliance by the unit with such emission limitation shall be determined in the same manner as provided for determination of compliance with regulations under section 111 applicable to electric utility steam generating units for which construction is commenced after September 18, 1978, except that compliance with the 1.2 pounds per million Btu and 0.6 pound per million Btu rates set forth in clauses (i) and (ii) shall be determined on the basis of average annual emissions of the plant in lieu of the 30-day rolling average which is applicable to each steam generating unit under such regulations.

"(e) Compliance Schedules.—

"(1) Submission by owners or operators.—Not later than January 1, 1985, the owner or operator of each plant listed under subsection (b) and the owner or operator of each substitute unit approved under subsection (c) shall submit to the Administrator a compliance schedule under this section, including increments of progress. Within 1 year after the submission of a compliance schedule, and after notice and opportunity for hearing, the Administrator shall approve or disapprove the schedule.

"(2) Promulgation by EPA.—If a compliance schedule is not submitted on or before the date required under paragraph (1) for any plant listed under subsection (b) or for any substitute unit approved under subsection (c), or if a schedule submitted under paragraph (1) for such plant or unit is not approved by the Administrator before January 1, 1986, the Administrator shall promulgate a compliance schedule, including increments of progress, for such plant or unit on January 1, 1986. If, after January 1, 1986, the Administrator determines that any previously approved compliance schedule, including the increments of progress in such schedule, is inadequate to meet the requirements of subsection (d), the Administrator shall require submission of, or promulgate, a modified compliance schedule, including increments of progress, for such plant.

"(3) Publication.—Each schedule which is approved or promulgated by the Administrator under this subsection shall be published in the Federal Register.

"(4) Deadlines.—The compliance schedule under this subsection shall provide that—

"(A) contracts shall be entered into for the purchase and installation of the technological systems of continuous emission reduction not later than January 1, 1993;

"(B) such systems shall be installed and in operation not later than January 1, 1995; and

"(C) the emission limitation required under subsection (d) shall be achieved for each calendar year after 1994.

"(f) Enforcement.—For purposes of sections 113, 114, 116, 120, and 304 of this Act, a compliance schedule under this section (including any increment of progress set forth in such schedule) shall be treated as an emission limitation.

"SEC. 186. PAYMENT FOR CAPITAL COSTS OF CONTROL.

"(a) 90 Percent Payment.—From the fund established under subpart 4 of this part, the Administrator shall make available to each owner or operator of a plant which contains a unit subject to a compliance schedule under section 185 such sums as the Administrator deems necessary to pay for 90 percent of the costs of the construction and installation of the technological system of continuous emission reduction necessary to comply with the emission limitation applicable under section 185(d).

"(b) Regulations.—The Administrator, after consultation with the Secretary of the Treasury, shall promulgate regulations under which—

"(1) no payment may be made under this section to a utility for any costs unless the Administrator determines that, under applicable rates schedules, the full amount of such payment will be used to reduce those electric rate increases (payable by customers of the utility) which otherwise would result from the construction and installation concerned; and

"(2) such payments shall be made at such times as will minimize any electric rate increases for customers of the utility.

"Subpart 3—State Plans for Additional Emission Reductions

"SEC. 191. CALCULATION OF STATE SHARES.

"(a) Share of 12,000,000 Ton Reduction.—

"(1) EPA computation.—For each of the 48 contiguous States, the Administrator shall compute a State share of the 12,000,000 ton reduction in annual emissions of sulfur dioxide referred to in section 181(a). The Administrator shall compute the State share for each such State as provided in subsection (b) not later than 18 months after the date of the enactment of the National Acid Deposition Control Act of 1985.

"(2) Data to be used in computation.—In making computations under subsection (b), the Administrator shall use the best available data. To the extent that other better data regarding the emissions of sulfur dioxide from any category of sources is not available on or before the date 18 months after the date of the enactment of the national Acid Deposition Control Act of 1985, the Administrator shall utilize the inventory of emissions developed in fulfillment of the requirements of the memorandum of Intent on Transboundary Air Pollution signed by Canada and the United States on August 5, 1980.

"(b) State Share.—

"(1) General rule.—The State share for each such State shall be the number of tons which is the sum of the amounts computed under subparagraphs (A), (B), and (C).

"(A) Electric utility excess emissions tonnage.—The tonnage computed under paragraph (2) for fossil fuel fired electric utility plants in the State.

"(B) Non-utility boiler excess emissions tonnage.—The tonnage computed under paragraph (3) for other fossil fuel fired steam generating units in the State.

"(C) Process emitters excess emissions tonnage.—The tonnage under paragraph (4) for industrial process emitters of sulfur dioxide in the State.

"(2) Electric utility excess emissions tonnage.—

"(A) Fraction of 10,000,000 tons.—The Administrator shall compute an excess emissions tonnage amount under this paragraph for fossil fuel fired electric utility plants in the State. The amount shall be determined by multiplying 10,000,000 tons by a fraction the numerator of which is determined under subparagraph (B) and the denominator of which is determined under subparagraph (C).

"(B) Numerator of electric utility fraction.—The numerator of the electric utility fraction shall be the tonnage of emissions of sulfur dioxide which the Administrator estimates to have been emitted during the baseline year at a rate in excess of 1.2 pounds per million Btu from fossil fuel fired electric generating plants which are located in the State and which, during the baseline year, emitted sulfur dioxide at an annual average rate in excess of 1.2 pounds per million Btu.

"(C) Denominator of electric utility fraction.—The denominator of the electric utility fraction shall be the tonnage of emissions of sulfur dioxide which the Administrator estimates to have been emitted during the baseline year at a rate in excess of 1.2 pounds per million Btu from all fossil fuel fired electric generating plants which are located in the 48 contiguous States and which, during the baseline year, emitted sulfur dioxide at an annual average rate in excess of 1.2 pounds per million Btu.

"(3) Non-utility boiler excess emissions.—

"(A) Fraction of 1,000,000 tons.—The Administrator shall compute an excess emissions tonnage amount under this paragraph for fossil fuel fired steam generating units other than those which are part of electric utility plants in the State. The amount shall be determined by multiplying 1,000,000 tons by a fraction the numerator of which is determined under subparagraph (B) and the denominator of which is determined under subparagraph (C).

"(B) Numerator.—The numerator of the fraction under this subparagraph shall be the tonnage of emissions of sulfur dioxide which the Administrator estimates to have been emitted during the baseline year at a rate in excess of 1.2 pounds per million Btu from fossil fuel fired steam generating units which are located in the State (other than units which are part of a fossil fuel fired electric generating plant) and which, during the baseline year, emitted sulfur dioxide at an annual average rate in excess of 1.2 pounds per million Btu.

"(C) Denominator.—The denominator under this subparagraph shall be the tonnage of emissions of sulfur dioxide emitted during the baseline year at a rate in excess of 1.2 pounds per million Btu from all fossil fuel fired steam generating units which are located in the 48 contiguous States (other than units which are part of a fossil fuel fired electric generating plant) and which, during the baseline year, emitted sulfur dioxide at an annual average rate in excess of 1.2 pounds per million Btu.

"(4) Process emitters excess emissions tonnage.—

"(A) Fraction of 1,000,000 tons.—The Administrator shall compute an excess emissions amount under this paragraph for industrial process emitters of sulfur dioxide in the State. The amount shall be determined by multiplying 1,000,000 tons by a fraction the numerator of which shall be the amount computed under subparagraph (B) and the denominator shall be the amount computed under subparagraph (C).

"(B) Numerator.—The numerator of the fraction under this subparagraph shall be the tonnage of emissions of sulfur dioxide emitted during the baseline year at an annual average rate in excess of the rate determined under subparagraph (D) from emissions units of industrial process emitters of sulfur dioxide which are located in the State and which, during the baseline year, emitted sulfur dioxide at an annual average rate in excess of the rate determined under subparagraph (D).

"(C) Denominator.—The denominator of the fraction under this subparagraph shall be the total tonnage of emissions of sulfur dioxide emitted during the baseline year at an annual average rate in excess of the applicable rate determined under subparagraph (D) from emissions units within industrial process emitters of sulfur dioxide which are located in the 48 contiguous States and which, during the baseline year, emitted sulfur dioxide at an annual average rate in excess of the rate determined under subparagraph (D). The amount computed under this clause shall be referred to as the 'national industrial process excess emissions amount'.

"(D) Average BACT emissions limit.—

"(i) For purposes of this paragraph, the average annual rate determined under this subparagraph for any emissions unit within a stationary source of industrial process emissions shall be the rate which the Administrator determines to be the national average BACT emissions limit for sulfur dioxide for emissions units within the category of process emitters involved.

"(ii) Utilizing the BACT/LAER Clearinghouse data available at the Environmental Protection Agency, the Administrator shall review the emission limitations for industrial process emitters which were established as "best available control technology" (BACT) under this Act during the period August 1977 through December 12, 1984. On the basis of such data, and not later than 1 year after the date of the enactment of the National Acid Deposition Control Act of 1985, the Administrator shall establish a national average BACT emission limit for sulfur dioxide for emissions units within each category of process emitters of sulfur dioxide.

"(c) Reallocation Among States.—Under

regulations promulgated by the Administrator, the Governors of any two or more contiguous States may (by agreement) reallot among agreeing States the State share of two or more agreeing States if, under such reallotment, the total reduction in annual emissions of sulfur dioxide from all stationary sources subject to emission limitations under section 193(a) is equal to or greater than, and contemporaneous with, the total reduction in annual emissions of sulfur dioxide from such sources which would be required under this part in the absence of such reallotment. The Administrator may promulgate such regulations under this subsection as may be necessary to carry out the purposes of this part.

"SEC. 192. SUBMISSION AND APPROVAL OF STATE PLANS.

"(a) BASIC REQUIREMENT.—Not later than one year after determination by the Administrator under section 191 of the State share for each State, each State for which a share is calculated shall submit a plan to the Administrator under this section.

"(b) APPROVAL BY EPA.—If a State plan is submitted under this section on or before the required date, the Administrator shall approve or disapprove such plan within 6 months from the date on which such plan is submitted. The Administrator shall approve the plan if he determines that the plan contains provisions, including enforceable increments of progress, adequate to assure that the emission limitations required under section 193 will be achieved as expeditiously as practicable but not later than January 1 of the first year which commences more than 10 years after the date of the enactment of this Act.

"(c) FAILURE TO SUBMIT STATE PLAN.—If no plan has been approved by the Administrator on or before the date two years after the enactment of the National Acid Deposition Control Act of 1985, effective on the date 10 years after such date of enactment all stationary sources of sulfur dioxide in the State which are referred to in subsection (d) and which are not subject to more stringent emission limitations under other provisions of this Act (or under State plans in effect under such other provisions) shall be subject to the emission limitations set forth in subsection (d).

"(d) FEDERAL BACK-UP EMISSIONS LIMITATIONS.—The emission limitations applicable under this subsection in the absence of an approved State plan under this part are as follows:

"(1) 0.8 pounds of sulfur dioxide per million Btu for each steam generating unit of a fossil fuel fired electric generating plant (other than an electric utility steam generating unit which is required to comply with emission limitations under part 1);

"(2) 0.8 pounds of sulfur dioxide per million Btu for each fossil fuel fired steam generating unit which is not part of an electric utility plant; and

"(3) the national average BACT emissions limit for sulfur dioxide for the category of process emitters involved (as developed under section 191) in the case of each industrial process emitter of sulfur dioxide in the State.

The emission limitations applicable under this subsection shall be treated, for purposes of sections 113, 114, 116, 120, and 304 as requirements of an applicable implementation plan.

"SEC. 193. EMISSION LIMITATIONS IN STATE PLANS.

"(a) EMISSION LIMITATIONS FOR COVERED SOURCES.—The plan for each State required to submit a plan under section 192 shall provide for emission limitations applicable to any covered stationary sources. The emission limitations for each stationary source subject to the State plan shall establish an allowable average annual sulfur dioxide emission rate for the source. The allowable average annual sulfur dioxide emission rates for such sources shall be established at such levels that if each source had emitted sulfur dioxide at the allowable rate during baseline year for that source, the sum of the total reductions in actual annual emissions of sulfur dioxide in the State during both baseline years would be equal to—

"(1) the State share determined under section 191(a), reduced by

"(2) the subpart 2 credit for that State.

"(b) STATE DISCRETION IN MEANS OF COMPLIANCE.—The State plans under this subsection may provide for compliance with the emission limitations applicable under such plans through the use of a technological system of continuous emission reduction or any other requirements which the State deems appropriate to reduce the sulfur dioxide emission rate.

"(c) ENFORCEMENT.—Each requirement of a State plan approved or promulgated by the Administrator under this section shall be treated, for purposes of sections 113, 114, 116, 120, and 304 as a requirement of an applicable implementation plan.

"(d) DEFINITIONS.—For purposes of this section—

"(1) COVERED STATIONARY SOURCE.—The term 'covered stationary source' means for any State a stationary source (other than a plant or unit which is required to comply with emission limitations under subpart 2 of this part) in the State for which—

"(A) the actual annual sulfur dioxide emission rates have been calculated by the Administrator for the baseline year, and

"(B) no new source standard of performance is applicable under section 111.

"(2) SUBPART 2 CREDIT.—The term 'subpart 2 credit' means, for any State, the total annual tonnage reduction in emissions of sulfur dioxide which would have been achieved in the State during the baseline year if all electric utility plants (and units thereof) in the State which are required to comply with emission limitations under subpart 2 were in compliance during that year with those limitations.

"SEC. 194. FINANCIAL ASSISTANCE FOR COMPLIANCE WITH STATE PLANS.

"(a) GRANTS TO STATES.—From the fund established under subpart 5, whenever funds are available under section 196(c)(2), the Administrator shall make available to each State—

"(1) which has in effect a State plan approved under this subpart, and

"(2) in which each plant subject to subpart 2 has achieved the emissions reduction required under subpart 2,

a portion of the total amount available for all States under section 196(c)(2) the fiscal year concerned.

"(b) DATE OF AVAILABILITY.—Sums shall be made available under this section to each State following the later of—

"(1) the date on which funds under section 196(c)(2) are first made available to States, or

"(2) the date on which the State plan for the State concerned is approved under this subpart.

"(c) PORTION ALLOCATION.—The portion allocated to any State under subsection (a) for any fiscal year shall be a percentage of the total amount available for all States during that fiscal year. Such percentage shall be determined by dividing—

"(1) the State emission reduction share calculated under section 191, and reduced by the State subpart 2 credit, as defined in section 193(d), by

"(2) 12,000,000 tons, reduced by the sum of the State subpart 2 credits for all States.

"(d) Use of Available Funds.—

"(1) In general.—Sums made available to a State under this subpart shall be used by the State in such manner as the State deems appropriate for purposes of—

"(A) providing for the emission reductions required in that State pursuant to this subpart;

"(B) reducing, or providing refunds with respect to, the fee imposed under section 197; or

"(C) funding any other State program which the State deems appropriate to carry out the purposes of this Act.

In any case in which the State has conducted and planning or in which any reductions required under this subpart have been achieved prior to the availability of funds to the State concerned, the sums available to that State under this subpart shall be treated as reimbursement. Any fee reduction or refund provided pursuant to subparagraph (B) shall be provided on a ratable basis (per kilowatt hour) with respect to all electric utilities in the State which are subject to such fee.

"(2) Administrative Expenses.—Not more than 5 percent of the amount made available to any State under this subpart in any fiscal year may be used by the State for purposes of administration of the State plan under this subpart.

"Subpart 4—Acid Deposition Control Fund

"SEC. 196. ESTABLISHMENT OF FUND.

"(a) Establishment.—There is established in the Treasury of the United States a trust fund to be known as the 'Acid Deposition Control Fund' (hereinafter in this subpart referred to as the 'Fund'), consisting of such amounts as may be transferred to such Fund as provided in this section.

"(b) Credits.—There are hereby credited, out of any money in the Treasury not otherwise appropriated, to the Fund amounts determined by the Secretary of the Treasury (hereinafter in this title referred to as the 'Secretary') to be equivalent to the amount received in the Treasury under section 196.

"(c) Use of Fund.—

"(1) In general.—Amounts in the Fund shall be available only for purposes of making expenditures which are described in this subsection.

"(2) Priorities.—If amounts available in the fund are inadequate to make all expenditures which are required to be made by the Administrator under this part, the Administrator shall make such expenditures in accordance with the following priorities:

"(A) First priority.—(i) The Administrator shall make payments to utilities under section 197(c) for utility rate reductions specified in section 197(c)(2).

"(ii) Not more than $10,000,000 may be made available from the fund for purposes of the l.i.m.b. demonstration project under section 198(a) of subpart 5.

"(iii) Not more than $10,000,000 may be made available from the fund in any fiscal year for purposes of accelerated research of other technologies under section 198(b) of subpart 5.

"(iv) Not more than $25,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990 may be made available from the fund for purposes of the mitigation program under title III of the Acid Rain Deposition Control Act of 1985.

"(B) Second priority.—The Administrator shall next make expenditures under section 186 and, if amounts in the fund are inadequate to make all expenditures under such section 186, the available amounts shall be allocated first to the facilities which first applied for payment under such section 186.

"(C) Third priority.—If all expenditures which can currently be made under section 186 have been made, the Administrator shall provide funding to States under section 194.

"(d) Administrative Provisions.—

"(1) Transfer.—The amounts appropriated by subsection (b) shall be transferred at least monthly from the general fund of the Treasury to the Fund on the basis of estimates made by the Secretary of the amounts referred to in such subsection (b). Proper adjustments shall be made in the amount subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

"(2) Reports.—The Secretary shall be the trustee of the Fund, and shall report to the Congress for each fiscal year ending on or after the date one year after the date of the enactment of this part, on the financial condition and the results of the operations of such Fund during such fiscal year and on its expected condition and operations during the next 5 fiscal years. Such report shall be printed as a House document of the session of the Congress to which the report is made.

"(3) Investment.—It shall be the duty of the Secretary to invest such portion of such Fund as is not, in his judgment, required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable for the needs of such Fund and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The income on such investments shall be credited to, and form a part of, such Fund.

"SEC. 197. FEES.

"(a) Imposition of Fee.—Under regulations promulgated by the Administrator, there shall be imposed a fee for each kilowatt hour of electric energy generated in the contiguous 48 States by an electric utility and for each kilowatt hour of electric energy imported into the contiguous 48 States.

"(b) Amount of Fee.—The fee shall be applied during each calendar quarter at a rate per kilowatt hour which is equal to 1.5 mill multiplied by the inflation adjustment for the calendar quarter in which the electric energy is generated or imported. The inflation adjustment for a calendar quarter is the percentage by which—

"(1) the implicit price deflator for the gross national product for the second preceding calendar quarter, exceeds

"(2) such deflator for the calendar quarter ending on December 31 of the year in which this part is enacted.

For the purposes of this subsection, the first revision of the price deflator shall be used.

"(c) Nuclear and Hydroelectric Power.—

"(1) Exemption.—The fee imposed under this section shall not apply to any electric energy (including imported electric energy) which is generated by nuclear or hydroelectric power.

"(2) Statement of exempt fraction.—Each electric utility which generates or imports electric energy and sells such electric energy to any other electric utility or to any other person shall determine the fraction of the total number of kilowatt hours of electric energy sold during each billing period which is exempt from the fee under this section by reason of paragraph (1). Where sales of electric energy are made by a utility to two or more other persons, such fraction shall be the same for all electric energy sold during the same period. The amount of the fee imposed with respect to electric energy sold by an electric utility to any person during any billing period, and the total number of kilowatt hours of electric energy sold to such person by any electric utility during such billing period on which such fee has been paid, shall be separately stated on each billing document rendered to the purchaser in connection with such sale.

"(d) Low-Income and Elderly Customers.—

"(1) Payments to utilities.—Under regulations promulgated by the Administrator, the Administrator shall make payments from the fund established under section 196 to each electric utility which has sold electric energy to any individual customer who certifies that, at the time of such certification, he is—

"(A) receiving aid to families with dependent children under a State plan approved under part A of title IV of the Social Security Act;

"(B) receiving supplemental security income benefits under title XIV of such Act;

"(C) receiving low-income home energy assistance under the Low-Income Energy Assistance Act of 1981;

"(D) a member of a household (within the meaning of the Food Stamp Act of 1977) which is receiving food stamps under that Act; or

"(E) receiving payments under section 415, 521, 541, or 542 of title 38 of the United States Code or under section 306 of the Veterans and Survivors Pensions Improvement Act of 1978

Such certification shall be submitted within 180 days after the date of the sale of the electric energy with respect to which such payment is made.

"(2) Rate reduction required for low-income and elderly customers.—No payment may be made to a utility under this subsection with respect to electric energy sold to any customer certified under paragraph (1) unless the Administrator determines that—

"(A) under applicable rate schedules, the full amount of such payment will be used to reduce the electric rates of the certified customer; and

"(B) the utility has established adequate procedures to assure that each customer of the utility will be informed in the utility's periodic billings of the payment authorized under paragraph (1) and the rate reduction available under this paragraph.

"(3) Amount of payment.—The amount of the payment made under this subsection to an electric utility with respect to sales of electric energy in any period shall be equal to—

"(A) 1.5 mill (multiplied by the inflation adjustment for the preceding calendar quarter) for each kilowatt hour of electric energy sold during that period to customers certified under this paragraph, multiplied by

"(B) a fraction—

"(i) the numerator of which is the total number of kilowatt hours of electric energy sold by the electric utility in that period for which a fee was paid by the generator or importer under this section, and

"(ii) the denominator of which is the total number of kilowatt hours of electric energy sold by the electric utility in that period.

"(e) Regulations.—The regulations of the Administrator under subsection (a) shall be promulgated not later than 6 months after the date of the enactment of this part and shall set forth the time and manner required for payment of the fee imposed under subsection (a), the information required to be reported in connection with the payment of such fee, and the requirements applicable to the exemption and rate reduction provided under this section.

"(f) Enforcement.—

"(1) Civil penalties.—Any electric utility (or importer of electric energy) which fails or refuses to pay any amount of a fee imposed under subsection (a) or which fails or refuses to file any report or other document required by the Administrator in connection with the imposition of such fee shall, in addition to liability for any unpaid amount of such fee (and interest on any such unpaid amount), be liable for a civil penalty of $50,000 for each day during which such failure or refusal continues. Any person who makes any false or misleading statement in any such report or other document required by the Administrator in connection with the imposition of such fee shall be liable for a civil penalty of $50,000 ($500 in the case of any person who makes any false or misleading statement in a certificate under subsection (d)).

"(2) Civil actions.—The Administrator shall bring a civil action against any electric utility (or importer) which fails or refuses to pay any amount of a fee imposed under subsection (a), fails or refuses to file any report or other document required by the Administrator in connection with the imposition of such fee, or makes any false or misleading statement in any such report or other document required by the Administrator in connection with the imposition of such fee. The Administrator shall bring a civil action against any person who makes any false or misleading statement in any document used for purposes of obtaining an exemption under subsection (d). Civil actions under this subsection shall be brought in the same manner and in accordance with the same procedures as are applicable to civil actions brought under section 113(b) against any person who violates any requirement of an applicable implementation plan.

"(g) Criminal Penalty.—Any electric utility (or importer of electric energy) which knowingly fails or refuses to pay any amount of a fee imposed under subsection (a) or which knowingly fails or refuses to file any report or other document required by the Administrator in connection with the imposition of such fee shall, in addition to civil liability under subsection (f), be subject to a criminal penalty of $100,000. Any person who knowingly files any false certificate or other document for purposes of obtaining an exemption under subsection (d) shall, in addition to civil liability under subsection (f), be subject to a criminal penalty of $1,000.

"(h) Effective Date; Termination.—The fees imposed under this section shall take effect with respect to electric energy generated or imported after December 31 of the year in which this part is enacted. The fee shall cease to apply on December 31 of the first year which ends more than 10 years after such enactment.

"Subpart 4—Accelerated Research on Cleaner Burning Industrial Processes

"RESEARCH FUNDS

"Sec. 198. (a) Full-Scale Demonstration Project.—The Administrator is authorized and directed to carry out a full-scale demonstration project to demonstrate the feasibility of the limestone injected multistaged burner (LIMB) technology. Not more than $10,000,000 is authorized to be appropriated from the fund established under subpart 4 for purposes of such project.

"(b) Accelerated Research for Other Processes.—The Administrator shall make such grants and enter into such contracts and other arrangements as may be necessary to accelerate the research necessary to develop advanced industrial processes (including atmospheric fluidized bed combustion and magnetohydrodynamics (MHD)) other than the limestone injection multistate burner technology which may result in lower levels of sulfur dioxide and oxides of nitrogen. In each of the five fiscal years commencing with the fiscal year 1986, not more than $10,000,000 is authorized to be appropriated from the fund established under subpart 4 for purposes of this subsection.".

CONFORMING AMENDMENTS

Sec. 102. (a) Enforcement.—Section 113(a)(3) of the Clean Air Act is amended by inserting "or is in violation of any requirement in effect pursuant to subpart 1 of part E," after "inspections, etc.)".

(b) Civil Actions.—Section 113(b) of the Clean Air Act is amended by inserting the following immediately after paragraph (5): "Whenever any person violates any requirement in effect pursuant to subpart 1 of part E, the Administrator may commence a civil action for permanent or temporary injunction or to assess and recover a civil penalty of not more than $25,000 per day of violation, or both.".

(c) Criminal Penalties.—Section 113(c)(1)(C) of the Clean Air Act is amended by inserting "or violates any requirement in effect pursuant to subpart 1 of part E," before "or".

(d) Judicial Review.—Section 307(b)(1) of the Clean Air Act is amended by inserting ", any final action taken by the Administrator under part E of title I" after "120" in the first sentence thereof.

Subtitle II—Control of Nitrogen Oxide Emissions

REVISIONS OF NEW SOURCE PERFORMANCE STANDARD

Sec. 201. Section 111 of the Clean Air Act is amended by adding the following new subsection at the end thereof:

"(k) The Administrator shall revise the standards of performance for emissions of nitrogen oxides from electric utility steam generating units which burn bituminous or subbituminous coal. Such revised standards shall prohibit the emission of nitrogen oxides from such units at a rate which exceeds—

"(1) 0.30 pounds per million Btu's, in the case of subbituminous coal; and

"(2) 0.40 pounds per million Btu's, in the case of bituminous coal,

based on a 30-day rolling average. Such revised standard shall take effect with respect to units which commence construction after the date of the enactment of this subsection. As used in this subsection, the terms 'electric utility steam generating unit', 'bituminous coal', and 'subbituminous coal' have the same meanings as when used in 40 CFR part 60, subpart Da, as in effect on January 1, 1983.

"(l) NSPS for NO_x Emissions From Certain Steam Generating Units.—The Administrator shall promulgate standards of performance under this section for emissions of oxides of nitrogen from all fossil-fuel-fired steam generating units which are new sources within the meaning of subsection (a)(2) and which are capable of combusting more than 50 million Btu's per hour heat input of fossil fuel (either alone or in combination with any other fuel). The standards under this section applicable to fossil fuel-fired steam generating units which are capable of combusting more than 250 million Btu's per hour heat input may vary from the standards applicable to units which are not capable of combusting more than 250 million Btu's per hour heat input.".

EMISSIONS FROM MOBILE SOURCES

Sec. 202. (a) Trucks and Truck Engines.—Section 202 of the Clean Air Act is amended by adding the following new subsection at the end thereof:

"(g) Oxides of Nitrogen Emissions From Light-Duty Trucks After 1987.—Effective with respect to vehicles and engines manufactured during and after the model year 1987, the regulations under subsection (a) applicable to emissions of oxides of nitrogen from trucks and truck engines the gross vehicle weight of which does not exceed 8,500 pounds shall contain standards which provide that such emissions may not exceed the number of grams per vehicle mile specified in the following table:

Gross vehicle weight:	Emission standard
Not in excess of 6,000 lbs	1.2
In excess of 6,000 lbs	1.7

Effective with respect to vehicles and engines manufactured during and after the model year 1987, the regulations under subsection (a) applicable to emissions of oxides of nitrogen from trucks and truck engines the gross vehicle weight of which exceeds 8,500 pounds shall contain standards which provide that such emissions may not exceed 4.0 grams per brake horsepower-hour. Nothing in subparagraph (B) or (E) of subsection (a)(3) shall apply to any standard established under this subsection.".

(b) Conforming Amendment.—Section 202(a)(3) (A)(ii) is amended by inserting "and except as otherwise provided in subsection (g)," after "(E)".

Subtitle III—Acid Deposition Damage Mitigation Program

STATE PLANS; FEDERAL ASSISTANCE

Sec. 301. (a) Restoration Program.—Any State may prepare, and submit to the Administrator for his approval and to the Director of the United States Fish and Wildlife Service for his comment—

(1) a survey of water quality deterioration

in such State which has resulted from acid deposition, and

(2) a proposal for research on mitigating the effects of acid deposition on terrestrial and aquatic ecosystems;

(3) proposed methods and procedures to restore the quality of water in such State which has deteriorated as a result of acid deposition.

(b) Financial Assistance.—

(1) In general.—From the fund established under section 196 of the Clean Air Act, the Administrator, after consultation with the Director of the United States Fish and Wildlife Service, shall provide financial assistance to States in order to carry out research on mitigation, and to carry out methods and procedures for restoration, which have been approved by the Administrator under this section.

(2) 80 percent limit.—The amount granted under this section to any State for any fiscal year shall not exceed 80 percent of the funds expended by such State in such year for carrying out approved methods and procedures under this section.

(3) Apportionment among states.—The Administrator shall provide for an equitable distribution of sums appropriated under this section among States with approved methods and procedures. Such distribution shall be based on the relative need of each such State for the restoration of water quality which has deteriorated as a result of acid deposition. The amount of any grant to a State under this section shall be in addition to, and not in lieu of, any other Federal financial assistance.

Mr. CONTE (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. SNYDER. Mr. Chairman, I reserve a point of order against the amendment.

Mr. CONTE. Mr. Chairman, I want to commend the efforts of the Public Works Committee in bringing this bill to the floor. With a goal to make our waters drinkable, fishable, and swimmable once again, the Clean Water Act is an important environmental safeguard. However, there is one pressing water quality issue that is not addressed in this legislation.

Acid rain poses a national and potentially disastrous threat to the quality of water in this country. Lakes, streams, and reservoirs are dead and dying. In some cases, entire ecosystems are threatened. And most tragically, our drinking water supplies are being contaminated by this "silent killer."

Mr. Chairman, acid rain is a clear and present danger to our environment and to our health. Every day, more than 166,000 tons of sulfur and nitrogen oxides—the equivalent by weight of 4,100 fully loaded freight cars—are shot into the skies of America. Let's face it. Acid rain is out of control.

To address this widespread threat to our water quality, my amendment directly attacks the source of this water pollution by controlling these acid rain causing emissions. This comprehensive Acid Rain Control Program is designed to reduce sulfur dioxide by 12 million tons and nitrogen oxide by 4 million tons within 10 years. In phase 1, the top 50 largest sulfur dioxide emitters are required to reduce a total of 6.5 million tons, and in phase 2, another 5.5 million tons are distributed among the States for further reductions. A generous cost-sharing provision is also included. Since the program is financed by a separate "Superfund" for acid rain control, there's no cost to the Federal Government.

Believe it or not, New Englanders are sensitive to the employment effects in the coal mining States. We are aware of the regional costs of reducing SO_2, and we are concerned about the impact of cost sharing the consumer. But we are equally serious about protecting our environment, our water quality and our health. The Congress has stalled on this issue for too long. It's time to face the facts and take a stand.

Just look at the facts. Acid rain has a devastating effect on water quality.

In the Eastern States, including the Midwest, OTA estimates that 17,000 lakes and 112,000 miles of stream are at risk from acid rain.

In Massachusetts, over 200 waterbodies are already dead—acidified with no signs of life. A recent study showed that 82 percent of the surface water in my State is vulnerable to long term acidification. And 20 percent of these water bodies, including the Quabbin Reservoir, are critically close to losing their capacity to neutralize acid.

Let me tell you about the Quabbin, a reservoir that supplies drinking water to the city of Boston. With 85 percent of the service pipes made of lead, the city must spend $1.3 million annually to treat the acidic water from the Quabbin. This deadly combination—lead pipes and corrosive water—presents a significant human health risk.

As you might expect, acid rain has dramatically affected aquatic life in the Quabbin. Since 1980, there has been a sharp decline in fish population and reproduction. For example, the egg mortality rate for the rainbow trout has reached a staggering 90 percent in some tributaries. Even with State stocking efforts, the trout catch has dropped 46 percent in the past 2 years.

The damage caused by acid rain is not limited to the Northeast region. In Wisconsin, for example, the Department of Natural Resources reported that 302 lakes in that State are now dead—killed by acid rain—and that another 1,400 are extremely threatened and probably will be dead before long.

Recent studies have also documented acid rain damage in the Rocky Mountain region and in the South.

It's a fact. Acid rain is causing significant damage now, and the effects will be disastrous in the future if controls are not in place. The National Academy of Sciences predicts that "at current rates of emissions of sulfur and nitrogen oxides, the number of affected lakes can be expected to more than double by 1990 and to include larger and deeper lakes."

It's clear that in Masachusetts and across the country, the acid reign of terror has ravaged the environment. This threat to our water quality, our health, forests and natural resources must be addressed on a national level in a timely fashion.

We can't afford to wait any longer.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. CONTE] has expired.

(On request of Mr. JEFFORDS and by unanimous consent, Mr. CONTE was allowed to proceed for 5 additional minutes.)

Mr. VENTO. Mr. Chairman, will the gentleman yield?

Mr. CONTE. I yield to the gentleman from Minnesota.

(Mr. VENTO asked and was given permission to revise and extend his remarks.)

Mr. VENTO. Mr. Chairman, I rise in strong support of the amendment offered by my colleague from Massachusetts. He is bringing before this body a workable solution to the growing problem of acid rain. Acid deposition is threatening our environment, health and economic well-being.

Mr. Chairman, for too long, the current administration, too many of our colleagues and others have stonewalled a national response to the problem of acid rain. We have all heard the litany of excuses from "acid rain is beneficial" to the current standard excuse "we don't have enough information on it." But while we fiddle, Rome burns.

The jury is in, Mr. Chairman, and the verdict on acid deposition is guilty. Acid rain exists; it is a problem and we must act. There is no disputing the information we have received and the increasing scientific documentation of the growing threat of acid rain.

This May, my Subcommittee on National Parks and Recreation conducted hearings on air quality in the national parks. These hearings revealed the threat to our national parklands from air pollution. Witness after witness testified about the degradation in the parks from the loss of vegetation and poorer water quality to deteriorating cultural resources and visibility. Unless we counteract this growing problem, our national treasures will be lost forever.

The subcommittee hearings also focused on the impact of acid rain on our environment.

While the major public focus of acid rain has been on the Northeast and Midwest, the hearings indicated that the problems associated with acid rain may not be limited to those regions. Several witnesses indicated that both the Southeast and West could fall victims to the savage impacts of acid rain. Among those Western National Parks which were identified as sensitive to acid rain are: Mount Rainier, Yosemite, Sequoia, Yellowstone, and Glacier.

Mr. Chairman, as one of the witnesses succinctly stated: We are sitting on a time bomb. We must act now to defuse this bomb before it is too late.

Mr. CONTE. I thank my good friend, the gentleman from Minnesota [Mr. VENTO], for his contribution and his interest.

□ 1450

Mr. JEFFORDS. Mr. Chairman, will the gentleman yield?

Mr. CONTE. I yield to my good friend, the gentleman from Vermont.

(Mr. JEFFORDS asked and was given permission to revise and extend his remarks.)

Mr. JEFFORDS. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I certainly want to enthusiastically join in this amendment. I think it is critical that we do something at this time. My State, the State of Vermont, probably receives the worst part of the acid rain at least from the ramifications not only on our pure water in the streams and lakes, but also on our forest growth. It is time to do something.

I know the gentleman is disappointed as I was disappointed that the Environmental Protection Agency, which had a chance to take a move in this area, failed to do so. Yet the gentleman knows as well as I know that the water pollution is a critical element here. I think the gentleman's amendment is excellently drafted in order to make sure that we have an opportunity to raise this issue. For to me it makes no difference whether the pollution comes out of the top of the stack or out of the bottom of the stack and runs across the land, it ends up in the water. And when it ends up in the water it creates a problem and creates pollution which is a serious one.

When I think of the numerous reports and studies on the damaging effects of acid rain on our natural environment, it is amazing to realize that we are just now debating this issue on the floor of the House. We can no longer ignore this byproduct of our industrial society. Smokestack pollution dispersed downwind is wreaking havoc on high mountain lakes, ponds, and streams to the detriment of water quality, aquatic life, and recreational opportunities. Sulfur dioxide and nitrogen oxide emissions from towering smokestacks are as damaging to our surface waters as the land based, nonpoint source pollutants addressed in other sections of this legislation.

This amendment to attach acid rain controls to the Clean Water Act is not designed to disrupt today's proceedings nor is it offered to merely prove a point. Acid rain is killing the surface waters of the Northeast. The Clean Water Act has been a success story of our Nation's desire to have clean, drinkable, and swimmable waters. But, we have to look beyond cleaning up municipal and industrial wastes discharged directly into our waters. With the phenomena of acid rain, we must now look skyward to pollutants that may be discharged into the heavens but fall to Earth as poisonous acid precipitation. The impacts of which can be so devastating that a water body can be left sterile and devoid of all aquatic life.

An opportunity to control the effects of acid rain was lost on the Environmental Protection Agency recently with the announcement of their so-called tallstacks regulations. Much to the chagrin of New Englanders, these regulations continue to allow the use of tallstacks as a pollution control technique. It is this very device that sends utility and industrial emissions downwind to destroy the quality of our surface waters. In discussing a renewal of the Clean Water Act today, we are offered an excellent opportunity to address the control of this environmental dilemma.

Vermont, along with much of the New England region, is highly susceptible to the effects of acid rain. Not only are we downwind of the primary sources of smokestack emissions, our geologic formations are extremely sensitive to acidic precipitation. Bedrock with a low chemical buffering capacity cannot neutralize the acidic composition of acid rain. Geologic surveys show that well over 50 percent of Vermont is sensitive to acid rain with medium to no buffering capacity. This area includes most of the Green Mountain and Taconic Mountain ranges and all of the Green Mountain National Forest.

The latest data from the Vermont Agency of Environmental Conservation has found 10 high-altitude lakes in these sensitive areas to be "dead." All of these lakes displayed high acidity. In addition, the agency has identified 108 lakes, representing 11,246 surface acres of water, as extremely sensitive to further acidic precipitation. The buffering capacity of these lakes has been so eroded over the years that their natural ability to rebound from an acidic rain event has been virtually destroyed.

The effects of acid rain are already evident in Vermont and given the sensitivity of a large portion of our State we can only expect the damages to increase. This situation concerns Vermonters and in the Yankee tradition this concern has not be kept quiet. This past March at our annual town meeting day, more than half of our towns felt it was their duty to send Washington a message on acid rain. A resolution urging the Environmental Protection Agency to do all in its power to institute controls over the sources of acid rain was considered at 154 town meetings. It was adopted at all but two and at most by unanimous consent.

This is not the first time that Vermonters have spoken out on this issue. In 1983 the Vermont Legislature adopted a resolution calling on President and Congress to enact legislation to reduce sulfur dioxide emissions by one-half by 1990. My own legislative survey of last year found 95 percent of the respondents in agreement that something had to be done to control acid rain. Out of this group, an impressive 81 percent were willing to bear a portion of the cost of a cleanup program as long as it meant something would get done.

Where our Government has not acted, the New England region has taken the initiative to control our own, albeit small, contribution to the acid rain problem. Recently, the New England Governors and the Eastern Canadian Premiers agreed to a program to reduce sulfur dioxide emissions from within our region. This international effort marks the first time that a concerted effort will be made to control this problem. And this is by a region that is the primary victim of acid rain in North America.

The acid rain amendment to the Water Quality Renewal Act presented here today supports each of the initiatives I have outlined. This is control legislation, calling for reduction goals of 12 million tons for sulfur dioxide emissions and 4 million tons for nitrogen oxides, it is a nationwide plan with each State contributing to the cleanup campaign based on their contribution and it includes a funding mechanism with contributions from all electricity users. Vermonters support this approach, we are willing to help with the solution even though we are not a source of the problem. I hope all States can display as much regard for our environment.

Mr. Chairman, I again want to commend Mr. CONTE for bringing this issue to the House floor. I hope each of my colleagues will give this initiative their full consideration. Our environment cannot wait.

I would be happy to yield back.

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. CONTE. I yield to the gentleman from New York.

Mr. BOEHLERT. Mr. Chairman, I commend my colleague in the well for his leadership on this very sensitive issue. It is no longer a regional issue, it is not even a national issue, it is an international issue, involving both the United States and Canada. The problem of acid rain is an international issue and we had better address it. We are creating a magnificent sewer in the sky and we are sitting here guilty of inaction.

Mr. Chairman, I want to commend the gentleman in the well, Mr. Conte. His leadership on this issue is well known to all of us.

Mr. Chairman, I would urge all of our colleagues to take a good look at this amendment. It is very deserving of our support.

Mr. CONTE. Mr. Chairman, I thank the gentleman from New York for his kind comments.

Mr. NIELSON of Utah. Mr. Chairman, will the gentleman yield?

Mr. CONTE. I yield to my good friend, the gentleman from Utah.

Mr. NIELSON of Utah. Mr. Chairman, as the gentleman in the well knows, we had a study on acid rain last year in which the Member in the well at this time was a member of that committee. I think the report did recommend an acid rain bill. However, I have to say that the Committee on Energy and Commerce has jurisdiction in this area and specifically the Committee on Health and Environment has jurisdiction. They defeated an amendment similar to this 10 to 9 last year. Such an amendment has not come forward.

I believe if you would look at the bill which is similar to the bill by Mr. Udall and Mr. Cheney of Wyoming, I think it is very similar to that. Is that correct?

I am generally supportive of that, but I do think it needs committee action. I do not think it is appropriate at this time. For that reason I would have to oppose it.

Mrs. JOHNSON. Mr. Chairman, will the gentleman yield?

Mr. CONTE. I yield to the gentlewoman from Connecticut.

Mrs. JOHNSON. Mr. Chairman, I thank the gentleman very much.

Mr. Chairman, I rise in strong support of the gentleman's amendment and wish to submit for the record a report that was published in 1983 by the Connecticut Agricultural Experiment Station in New Haven. This outstanding organization did carefully research on this subject from our perspective in Connecticut and concluded that there is little doubt that rain in Connecticut and elsewhere in the Northeast has been acidified by increased emission of sulfur dioxide and nitrogen oxide. It further notes that though the effects of acid rain are subtle, current levels of acid rain caused air pollution may cause genetic, biological, and ecosystem changes that have yet to be identified.

Mr. Chairman, during 1980 over 27 million tons of sulfur dioxide and 21 million tons of nitrogen oxide were emitted into the U.S. atmosphere. Our own Office of Technology and Assessment reported that.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. Conte] has expired.

(By unanimous consent, Mr. Conte was allowed to proceed for 2 additional minutes.)

Mrs. JOHNSON. Mr. Chairman, will the gentleman continue to yield?

Mr. CONTE. I yield further to the gentlewoman from Connecticut.

Mrs. JOHNSON. I thank the gentleman for yielding.

Mr. Chairman, our own Office of Technology Assessment reported that if energy use patterns and current laws do not change, both sulfur and nitrogen pollutants will remain high for at least the next 50 years which would be disastrous to America's natural ecosystems.

Mr. Chairman, I commend the gentleman for his leadership in this area.

ACID RAIN: SOURCES AND EFFECTS

CONCLUSIONS

Nature and sources of acid rain

There is little doubt that rain in Connecticut and elsewhere in the Northeast has been acidified by increased emissions of suffur dioxide and nitrogen oxides. The increased emissions of sulfur dioxide can be attributed largely to increased combustion of fossil fuels. Nitrogen oxides are produced during high temperature combustion regardless of the composition of the fuel and the observed increases can be attributed largely to automobiles as well as stationary combustion sources.

In addition to acidifying rain, the gaseous oxides of nitrogen and sulfur may react directly with materials they contact, or they may react with other substances to produce particulate aerosols. Thus, acid rain is a mixture of acids dissolved in water, reactive gaseous oxides, and fine particulate sulfate and nitrate aerosols. In addition, air contains other pollutants such as ozone, hydrocarbons and heavy metals that also may be harmful. Unfortunately, these various pollutants are often grouped together under the heading of "acid rain," which has become a subject of national and even international environmental concern.

The sources of acid rain and other air pollutants in Connecticut are not readily quantified. This is due in part to the varied components of acid rain: if damage is caused largely by gaseous SO_2, for example, its relatively short residence time in the atmosphere suggests that local sources are important. Fine particulate aerosols, on the other hand, can be transported over longer distances. The more distant the source, the more difficult it becomes to specify that source. Present models that attempt to estimate the trajectory of polluted parcels of air have errors of the order of 50% the distance involved. However, it is clear that regions and perhaps even states can be identified as source areas.

Rain in Connecticut has an average pH of about 4.3-4.4, which is highly acidic compared to unpolluted rain with pH 5.6. The area of most highly acidified rain (pH ~ 4.2) lies to the west of Connecticut, covering the general area of western Pennsylvania, western New York, eastern Ohio, and southeastern Ontario. Measurements of sulfate and nitrate deposition confirm that this area is the center of acid deposition. Because large amounts of sulfur dioxide and nitrogen oxides are produced in the 28 states east of the Mississippi, it is reasonable to conclude that, once again, man has fouled his own nest.

Effects of acid rain

To date, the effects of acid rain on the environment of Connecticut can be summarized as subtle. The soils of Connecticut are generally well buffered and show no evidence of acidification by acid rain. Measurements of the alkalinity of 35 lakes in Connecticut show little or no change since earlier measurements in 1937-1939. Similarly, there is no evidence that fish in our lakes have been affected by acid rain, but there are 1,000 lakes in Connecticut large enough to have names and some changes may have gone undetected. There is no evidence of damage to agricultural crops, and little or no reason to believe that our forests have been adversely affected to date. However, concern has been expressed that current levels of air pollution may cause genetic, biological and ecosystem changes that have yet to be identified.

The effects of acid rain on structures in Connecticut are evident in the weathering of some statues and other building stone. The damage is caused largely by the sorption of gaseous oxides, particularly suflur dioxide, which then dissolves in dew or other moisture to produce sulfuric acid.

There is little evidence of any direct effect of acid rain—i.e. increased acidity of rainfall—on human health. The notion that acid rain will burn skin or dissolve one's clothing has no basis in fact. However, there is no question that some forms of air pollution are harmful to health. Specifically, fine particulate aerosols can lodge in the lung and cause respiratory problems. A portion of these aerosols are acidic due to the presence of sulfur oxides. The association between these are pollutants and human health is statistical, rather than clinical, with one published study indicating an increase in mortality in New England due to air pollution. The precise role of sulfate aerosols in this complex air pollution problem is not known.

Mr. CONTE. I thank the gentlewoman from Connecticut for a fine contribution.

Mr. SCHEUER. Mr. Chairman, will the gentleman yield?

Mr. CONTE. I yield to the gentleman from New York.

(Mr. SCHEUER asked and was given permission to revise and extend his remarks.)

Mr. SCHEUER. I thank the gentleman for yielding.

Mr. Chairman, I want to congratulate the gentleman for this initiative. I assume he has the full backing of the EPA leadership and the administration. I congratulate the gentleman on this tremendous quantum jump, this leap ahead in their thinking.

I have chaired a Science Committee which has had several hearings on acid rain. We have jurisdiction over acid rain research. Up to now the administration has always been in favor of more research but less action.

Mr. CONTE. Well let me say to the gentleman if he can get it out of his committee, to heck with the administration and EPA. I do not see this Congress moving expeditiously on acid rain legislation. There are a lot of things that the administration, the EPA and other agencies do not like and we pass it over their objections. So do not be bashful, get the bill out here to the floor. This is the first time we ever had a chance to talk about it on the floor.

Mr. SCHEUER. Mr. Chairman, I congratulate the gentleman in the well, the gentleman from Massachusetts [Mr. CONTE].

Mr. MOAKLEY. Mr. Chairman, I rise in strong support of the amendment offered by the gentleman from Massachusetts [Mr. CONTE]. While many may believe that acid rain is a problem of the Northeast and does not affect their constituencies, nothing can be further from the truth.

Our own Office of Technology Assessment [OTA] estimates the number of acid-altered lakes as 2,983, or 17 percent of the lakes in the Eastern half of the United States, mostly in the northeast and north-central regions. Recent evidence indicates that many lakes in high alpine areas of the West must also be added. OTA similarly estimated that 22,765 stream miles, or 19 percent have been acid-altered. Nearly all areas in the Eastern United States, including parts of the Midwest, are impacted. In Massachusetts, 19 percent of the surface waters are potentially acid altered.

The sad fact is that the advertisements you see of the beautiful crystal blue lakes—the lakes that look as clear as your neighborhood swimming pool—the lakes with the solitary fisherman. The sad fact is that that solitary fisherman will be sitting there all day without so much of a nibble. The sad fact is that those crystal blue lakes are dead from acid rain. The sad fact is that we know about this problem, it is well documented, and we have not taken corrective action.

In urban districts like mine, however, we are also losing our built environment as well. What is ironic about the loss of our built environment, is that many of the building materials which were originally chosen for their durability, have been found to be highly susceptible to acid rain. The result is not only the loss of much of our heritage, but enormous financial costs as we attempt to save these structures. Unfortunately, very little is known about how to prevent deterioration to buildings and sculptures from acid rain.

Frankly, the loss of either our lakes or buildings is probably not our biggest problem. While both the loss of our lakes and buildings are extremely serious, the ultimate threat is the effect of acid rain on human health.

We have clear documentation of the seriousness of sulfuric acid and the oxides of sulfur and nitrogen inhaled by people with chronic bronchitis, asthma, and emphysema. We do not know, however, precisely at what levels these people are at risk or whether these acids acting together may pose an even higher risk.

According to Dr. Morton Lippmann, director of the Aerosol and Inhalation Research Laboratory and professor of the Department and Institute of Environmental Medicine at the New York University Medical Center, it has been "clearly demonstrated that asthmatics are an especially sensitive segment of the population with respect to the bronchoconstrictive effects of sulfuric acid and nitrogen oxide," and that "adolescent asthmatics may well be an especially sensitive subsegment of the asthmatic group."

The most serious threat, however, does not affect just those suffering from respiratory problems, but is affecting everyone who drinks water. By mobilizing toxic metal such as lead and mercury, acid rain is undoubtedly getting into our drinking water—either directly from our wells and reservoirs, or added as acidic water gradually corrodes our distribution system.

To prevent metal pollution, and to protect the pipes, millions of dollars are spent annually throughout the United States to raise the pH of "raw" water entering our distribution systems. Gus Foss, the Boston Metropolitan District Commission's principal sanitary engineer, adds sodium hydroxide to the MDC system to raise the water to a pH of 8.8—enough to reduce the solubility of lead prevalent in the pipes of the service lines. Even nonacidified water, such as the MDC's water supply, would have to be treated to acquire this pH-acidified water which will require even further additions of sodium hydroxide.

While those of us receiving town or city water can demand action, many of my constituents use well water and have little recourse.

The amendment offered by the gentleman from Massachusetts seeks to resolve this problem now rather than waiting—waiting until the problem is worse and the solutions are more difficult. I believe that the 12-million-ton reduction in sulfur emissions mandated from this act are necessary if we are going to adequately attack this problem. Those of us in the Northeast have already expressed our willingness to carry our fair share of the load. New York has already passed legislation to reduce acid rain in that State. Governor Dukakis has endorsed legislation in Massachusetts to cap sulfur emissions in our State and requiring additional reductions if Federal standards are not forthcoming.

Mr. Chairman, I support this amendment—my constituents demand this amendment. I urge my colleagues to support this amendment and demonstrate to the American people that this Congress is serious about protecting both the environment and public health.

● Mr. ST GERMAIN. Mr. Chairman, I rise in support of the amendment to H.R. 8 which my colleague Mr. CONTE is offering to institute a program to control the harmful effects of acid rain. We in New England are too well acquainted with the disastrous effects of acid precipitation on our lakes, rivers, and streams. Individually and as a group, members of the New England delegation have worked for years attempting to bring an effective control program into being. In spite of the crucial nature of the issue, we have yet to consider it on the floor of the House. My constituents regard acid precipitation as the most pressing of environmental problems, with the possible exception of hazardous waste disposal.

Acid rain is causing significant damage to our waters and thus can well be addressed under the Water Quality Renewal Act. We have repeatedly delayed considering remedies to the damage which have already been caused by acid precipitation and while we have delayed the effects have grown worse. The amendment which is being introduced would establish a fair and effective program to curb acid emissions and to share the cost of so doing nationally. We have authorized continued studies of acid rain essentially to buy time and avoid dealing with the real issue. There is simply no more time to buy; it is important that we act now.●

● Mr. SIKORSKI. Mr. Chairman, I would like to thank the gentleman from Massachusetts for raising the important issue of acid rain. He addressed a problem that deserves the immediate attention of this body and the American public. This is a problem that relates very clearly to the quality of our water, our food, and our life. This issue is germane to any consideration of the public health and continued welfare, regardless of the vehicle used to bring this hazard to the American peoples' attention.

Acid rain is probably the most serious environmental threat to the North American continent. But for too long the debate has construed the problem of acid rain as solely one facing the States in the Northeast and the solution an Eastern one. We are now beginning to see the impact of acid rain beyond the Northeast. The EPA has reported that the regions of the United States that are vulnerable stretch from Florida to the State of Washington, from California to Maine. Even the deserts of New Mexico and Arizona show extreme levels of acidic deposition. All across the country, thousands of lakes, millions of trees, and millions of acres of land are threatened by the poisons of acid rain.

While the threat of acid rain poses is environmental in nature, it endangers more than just our Nation's health. Its effects also strike at the heart of our Nation's economic vitality. Agriculture, which accounts for 40 percent of the economy of my home State of Minnesota, is directly threatened by acid rain. The forest industry, which contributes significantly to our Nation's economy, is also threatened by continued exposure to acid rain, as is the tourism and sportfishing industries. In short, acid rain touches all regions of our Nation and all sectors of our economy.

Moreover, acid raid poses a serious threat to human health. Scientific evidence indicates that acid rain may be linked to several forms of human brain degeneration, particularly Alzheimer's disease, a common but devastating form of senility. Other research has uncovered links between sulfur dioxide (the primary precursor of acid rain) and premature death in humans—up to 50,000 a year.

We don't need another commission, another study. We need to act.

I appreciate Mr. CONTE's desire to promote the resolution of the issue of acid rain. I share his sense of urgency and I thank the gentleman for his amendment.●

● Mr. ROTH. Mr. Chairman, I rise in support of this effort to protect and preserve the quality of our Nation's water. I would like to commend the gentleman from Massachusetts [Mr. CONTE] for offering this amendment and giving us at long last an opportunity to discuss the topic of acid rain. It is clear that acid rain is damaging one of our most valued natural resources, our lakes.

Acid rain is intimately related to the pending subject of water quality. Acid deposition does result in a deterioration in the water quality of our lakes, streams, and ponds. Countless scientific studies have documented the widespread damage and potential threats to our rivers and lakes. In my home State of Wisconsin, there is a clear potential for serious long-term damage from acid rain.

The Wisconsin Department of Natural Resources reports that 302 of Wisconsin's 11,000 lakes have shown the first signs of stress due to acid rain. Water chemistry measurements indicate that these lakes measures no alkalinity. Another 1,400 lakes in Wisconsin are extremely sensitive, with very low alkalinity levels measured.

Nationwide, water bodies are being threatened by acid rain. Lakes and streams are dying, in turn, threatening entire natural habitats.

By addressing the issue of acid rain now, we can prevent a crisis in States like Wisconsin, where the threat of dying lakes already exists. We can avert a disaster if we have the will to act.

Mr. Chairman, I again want to commend Mr. CONTE for giving us this overdue opportunity to debate acid rain on the House floor. I hope that my colleagues will join with me in supporting this effort to truly promote water quality. There is nothing more germane to the issue of water quality, particularly in the Northeast and Midwest, than acid rain. There is a time to study and a time to act. The time to act is here.●

● Mr. MARKEY. Mr. Chairman, I rise to join Mr. CONTE in his efforts to get acid rain included as a part of the debate on clean water.

This amendment, which includes much of the bill that my colleague from Massachusetts and I have introduced, is entirely germane to this bill and deserves to be heard.

For many years, we have tried to get the serious question of acid rain debated on the floor of this House. We have been unsuccessful because of a deliberate policy to block debate on this critical environmental issue. Consequently, I strongly support this amendment as a vital step toward controlling acid rain.

As a chairman of a subcommittee which has some jurisdiction over the acid rain issue, I support this amendment. Acid rain deserves the attention of this Congress, and should be debated and passed by this Congress.●

Mr. CONTE. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. Does the gentleman from Kentucky [Mr. SNYDER] insist on his point of order?

Mr. SNYDER. Mr. Chairman, I do insist on the point of order and I would like to be heard on it.

The CHAIRMAN. The gentleman will state his point of order.

POINT OF ORDER

Mr. SNYDER. Mr. Chairman, the amendment is subject to a point of order on two grounds. First it is in violation of House rule XVI which states that "No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment."

The amendment which the gentleman offers is not germane. It is, with minor changes, substantially that embodied in H.R. 1030, which the gentleman introduced on February 7, 1985. The purpose of that bill was to decrease sulphur dioxide emissions by requiring certain electric utilities plants and other sources to reduce their rates of emissions. Since the bill made extensive amendments to the Clean Air Act, it was referred solely to the Committee on Energy and Commerce, who have jurisdiction of this matter.

Today we have almost identical provisions before us embodied in Mr. CONTE'S amendment which are far beyond the scope of the bill we are now considering, H.R. 8, and deal with the subject properly within the jurisdiction of another committee, that is, the Committee on Energy and Commerce.

The scope of H.R. 8 is limited to the Clean Water Act and does not include extensive amendments to the Clean Air Act as the gentleman has proposed.

The gentleman's amendment would set air emission standards for certain electric utilities and other sources and would set up a financing mechanism to fund the program. According to subpart 4 of the amendment, a fund would be established to pay for the owner operators' capital costs to install appropriate air emission equipment required under the amendment.

Mr. Chairman, therein lies the other problem making this subject to a point of order. It is in violation of section 303 of the Budget Act since it increases revenues before the first Budget Act has been enacted. As we know, we do not have the first Budget Act enacted at this time.

So for those two reasons, Mr. Chairman, I strongly suggest that it is subject to a point of order.

I might say, too, Mr. Chairman, as an aside that having looked at the New York Times, when the gentleman from Massachusetts says that the Public Works Committee—on last Sunday—never says "no" to anything, our leadership; today we are saying no to this.

The CHAIRMAN. Does the gentleman from Massachusetts [Mr. CONTE] want to be heard on the point of order?

Mr. CONTE. Yes, Mr. Chairman.

The CHAIRMAN. The gentleman from Massachusetts is recognized.

Mr. CONTE. Mr. Chairman, it is very difficult to refute that scholarly legal opinion offered by the jurist from Kentucky. But I will do my humble best.

Mr. Chairman, the amendment I feel is germane to the committee amendment. It deals with the same subject matter as contained in the bill.

For example, the committee amendment includes a program to address the acidification of this Nation's lakes. If implemented, this amendment would accomplish the same goal by controlling the source of this acidity. Also, the bill, as a whole, is concerned with the protection and improvement of water quality in this country. And this amendment directly addresses the protection of water quality by controlling acid rain.

For these reasons, the amendment is in order and germane to the bill.

Mr. Chairman, I rest my case.

Mr. JEFFORDS. Mr. Chairman, I ask to be heard on the point of order.

The CHAIRMAN. The gentleman from Vermont is recognized.

Mr. JEFFORDS. Mr. Chairman, I think it is important to analyze the situation we are talking about here and to examine it with respect to the jurisdiction of the committee. The committee has jurisdiction over both issues, whether it be air pollution or water pollution. I think there is no question about that.

The question here is the germaneness of the bill. In addition to the remarks made by the gentleman from Massachusetts [Mr. CONTE] this bill also has non-point water pollution provisions in it. What are we involved with here in acid rain? We are involved with non-point water pollution. How does that occur? If you have a plant that has emissions in its stack, if you have scrubbers in it and it scrubs the pollution out, that effluent should run across the land and go into the water, then it would be covered, no question about it, as water pollution.

What we have here is the effluent goes out of the stack, it goes up, it comes down in water on land and runs across the land into the water and pollutes it. There is no question in my mind that that is a very relevant aspect of the water pollution problem, whether it be manure or whether it be from serious contaminating elements from stacks.

□1500

So it would appear to me that this committee is not restricted in its ability to take care of water pollution merely because it may also be an air pollution problem.

Mr. FRANK. Mr. Chairman, I rise to speak on the point of order.

Mr. Chairman, I want to associate myself with the remarks of the gentleman from Vermont [Mr. JEFFORDS] on the point of order. The question of the relevance of this to legislation dealing with clean water seems to me overwhelming. From the standpoint of my own district and my own State, there is no greater threat that people are concerned about, and I would hope that we would be given the chance, given that clear relevance, to debate this and act on it in this context.

Mr. MARTIN of New York. Mr. Chairman, I rise to speak on the point of order.

Mr. Chairman, I would like to embrace the comments of the gentleman from Massachusetts, and my colleague and neighbor from Vermont. I can think of nothing that would be more relevant to pollution of our waters than the tragic problem we have with sulfur dioxide, nitrogen oxides polluting the lakes and streams and rivers of this country, particularly in the Great Northeast.

I can think of nothing more relevant, and I support the position of the gentleman from Massachusetts [Mr. CONTE].

Mr. NIELSON of Utah. Mr. Chairman, I rise to speak on the point of order.

Mr. Chairman, I concur with many of the things that have been said about the desirability of having acid rain before us, and I am cosponsor of a bill to do exactly that. However, the statement made by the gentleman from Vermont is incorrect. The Public Works and Transportation Committee does have water pollution, but they do not have air pollution; they do not have air quality in their committee.

As the gentleman from Kentucky appropriately stated, this is the exclusive province of the Committee on Energy and Commerce and the Health and Environment Subcommittee of that committee.

I believe also some aspects need to be looked at as to the employment effects on the Eastern coal, which I think is a very serious possibility; I think all these things need to be taken into account, and therefore, I would hope that the Chair would rule for the point of order.

Mr. VENTO. Mr. Chairman, I rise to speak on the point of order.

Mr. Chairman, I think that this amendment is clearly germane. The fact is, if we take the arguments of our distinguished colleagues and add them together, we find that one committee deals with the air and one committee deals with the water, and that never the two shall mix.

The fact of the matter is that that means that under any context we could never deal with the particular issue.

So I would submit that this airborne pollutant, and that in fact produced from fossil fuel very often, from various types of sources whether they are point or non-point sources, which this legislation deals with.

The fact is, it means that all these lakes that are experiencing this heightened pH would not be able to—we cannot deal with the problem, then in essence, is what the arguments of those that have been presented would dictate to us.

So I would suggest that it is in order; that this is a very important source of pollution in these environments, and certainly deals with water quality and we cannot change that water quality unless we can deal with the physical environment and the activities of man in that environment that are affecting it, and this is certainly one of the most important, Mr. Chairman.

The CHAIRMAN (Mr. REID). It is the ruling of the Chair that the amendment changes a law not amended in the pending bill and outside the jurisdiction of the reporting committee, and deals with the regulation of emissions not within the scope of the bill.

For that reason, the amendment is not germane.

As to the point of order under section 303(a) of the Budget Act, the amendment does raise revenues through fees on electrical energy for fiscal year 1986, to be deposited in the Treasury, and since Congress has not adopted a first budget resolution for fiscal year 1986, the Chair also sustains the point of order on that basis.

AMENDMENT OFFERED BY MR. ROBINSON

Mr. ROBINSON. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ROBINSON: In the matter designated as "SEC. 42. GRANTS FOR REPLACEMENT OF CONTAMINATED GROUNDWATER." and inserted on page 86, after line 25, by Mr. Howard's amendments, insert after subsection (h) the following new subsection:

(i) JACKSONVILLE, ARKANSAS.—The Administrator shall make a grant under this section of $2,000,000 in each of fiscal years 1986, 1987, and 1988 to the city of Jacksonville, Arkansas, for the purpose of providing alternative water supply on a temporary basis and providing permanent remedies for water supply problems resulting from groundwater contamination.

Mr. ROBINSON (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

Mr. ROBINSON. Mr. Chairman, the measure we have before us, the Water Quality Renewal Act, is of great importance. And the amendment by the distinguished gentleman from New Jersey is a vital adjunct to H.R. 8. Its importance has been brought home to me in a most graphic way.

Jacksonville, AR, is my hometown. And it is in trouble. A couple of weeks ago, Jacksonville residents opened their newspapers to read headlines that revealed the possible contamination of Jacksonville's municipal water supply.

That contamination is due to trace elements of two isomers of dioxin being found in an initial water sample. Dioxin is a known carcinogen—and a safe exposure level, if there is such a thing, has not been set.

I am aware of the fact that it is unusual for dioxin to be found in water. In fact the Environmental Protection Agency has retested both the city's water supply as well as private wells to determine the extent of the problem we face in Jacksonville.

Included in the amendment of the gentleman from New Jersey is a provision providing $150 million for replacement of contaminated ground water. Up to $2 million a year per locality in the form of a grant with a $10 million cap per State is mandated.

My amendment would simply earmark funds to ensure pure drinking water for the citizens of Jacksonville. I urge my colleagues to support my amendment.

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. ROBINSON. I yield to the gentleman from New Jersey.

Mr. ROE. Mr. Chairman, we have examined this very important amendment on our side. It relates to a specific, very serious problem in Jacksonville, AR, and we have no objection to the amendment.

Mr. HAMMERSCHMIDT. Mr. Chairman, I rise to support the gentleman's amendment.

First, I want to commend Mrs. NANCY JOHNSON for adding the section 42, "Grants for replacement of contaminated ground water." I do know that the gentleman from Arkansas [Mr. ROBINSON] has a valid cause, that the city of Jacksonville has potential real damage done to their ground water, and I think we ought to have the authorization, as he suggests in his amendment. Therefore, we support his amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Arkansas [Mr. ROBINSON].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. PURSELL

Mr. PURSELL. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. PURSELL: Page 113, after line 13, insert the following:

SEC. 54. LIMITATION ON TOTAL APPROPRIATIONS FOR FY 1986.

Notwithstanding any other provision of this Act and any amendment made by this Act—

(1) not more than $2,606,726,000 may be appropriated for the fiscal year ending September 30, 1986;

(2) not more than $2,661,467,246 may be appropriated for the fiscal year ending September 30, 1987;

(3) not more than $2,713,365,857 may be appropriated for the fiscal year ending September 30, 1988;

(4) not more than $2,762,206,442 may be appropriated for the fiscal year ending September 30, 1989; and

(5) not more than $2,793,971,816 may be appropriated for the fiscal year ending September 30, 1990;

to carry out this Act and the Federal Water Pollution Control Act.

Mr. PURSELL (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. PURSELL. Mr. Chairman, on behalf of myself and Congressman PENNY from Minnesota, we are offering today a freeze amendment to take the Water Quality Renewal Act to the 1985 appropriated level.

We have had several freeze amendments to authorization bills through the House this session: Seven in total, on six of which we have had recorded votes. I am not going to take the time today to detail that overwhelming bipartisan support, Democrats and Republicans, who have been consistent in the principle of trying to achieve, through the freeze amendment process, absent a Budget Conference Report, at least $32 billion in savings in the attack on the deficit.

This Nation is looking at us each day, looking at our recorded votes. I suggest that if we take a close look at H.R. 8, the water quality bill, this bill is not only over the 1985 level, it is $2 billion above the fiscal year 1985 appropriated level.

So I suggest, on behalf of my colleagues who are supporting this amendment, that we address this issue up front and squarely today, and we will certainly ask for a recorded vote at the end of the debate.

I would like to also announce that the administration and the author of the letter which I have in my hand, Mr. Lee Thomas, have indicated that they strongly oppose H.R. 8, the Water Quality Renewal Act of 1985, unless significant changes are made.

Mr. Thomas writes:

> Our most serious fiscal concerns of H.R. 8 are the excessive authorization levels which would reverse 4 years of fiscal restraint, at a time when control of the deficit continues to be one of the Nation's gravest problems.

We all understand what a veto is, and I am suggesting that our amendment is better in keeping the committee at the 1985 appropriated level than the administration's early budget requests, which are below that.

Our amendment does exactly that, freeze at the level of the 1985 appropriated number of $2.6 billion, and will allow, I might add, half of projected inflation costs in the out years, 1987 through 1990. The House-passed budget resolution projects inflation at 4.3 percent in fiscal year 1986, 4.2 percent in fiscal year 1987, in 1988, based on the projections of the House-passed budget resolution, 3.9 percent; in 1989 a projected inflation rate of 3.6 percent, and in 1990, an inflation rate of 3.3 percent. In the outyears, our amendment allows for an increase equal to half of these projected rates of inflation. In summary, we are asking for a freeze in 1986 at the current, fiscal year 1985 appropriated level. Then, our amendment provides for an inflation adjustment of half the projected rate.

The House has stated its will quite clearly in the past. You might have looked at and read David Broder's column of yesterday in many papers throughout the United States, and I have a great respect for the columnist, who wrote:

> If this were a rational world, the government would end its mindless procrastination in dealing with the problems of runaway Federal deficits. Those deficits are the cancer of our economic society, and the longer they are left untreated, the more certain and painful will be the end of our current prosperity. Every diagnostic effort to look at the economic cancers leads to the recommendation that the budget deficit must be cut with whatever short-term pain by dealing with defense, domestic spending, entitlements and taxes.

Like the good doctor, Mr. Broder has correctly diagnosed the illness of our body politic. Unlike President Reagan's doctors, he cannot perform the surgery. Only this Congress can implement the cure. We are deciding today whether we have the skill and the will to save the life of our patient, America's economic recovery.

The CHAIRMAN. The time of the gentleman from Michigan [Mr. Pursell] has expired.

(On request of Mr. Penny and by unanimous consent, Mr. Pursell was allowed to proceed for 5 additional minutes.)

Mr. PURSELL. I yield to the gentleman from Minnesota [Mr. Penny].

Mr. PENNY. I thank the gentleman for yielding.

I join my colleague from Michigan [Mr. Pursell] in offering this freeze amendment. At a time of huge budget deficits, it seems clear to all of us here in the House that we cannot afford to spend more on any programs, regardless of how high a priority we may place on those programs. In fact, given the size of the deficit, we all recognize that some of the lower priority items, in terms of Federal programs, in fact have to be reduced.

This program has been increased in the authorization bill by $2 billion. Our House budget resolution called for a continued funding level for this program at $2.6 billion.

Again, what we are asking for is to keep the funding level for this program at a constant level. Fund this program in fiscal year 1986 at the same level that we funded it in fiscal year 1985. If we want to make serious deficit reduction here in the House, we have to keep both authorization bills and spending bills, appropriation bills, within our budget, and we have to begin with an across-the-board freeze effort in those areas.

The budget resolution does call for a freeze in funding levels for this program at $2.6 billion in fiscal year 1986. It then allows half of the rate of inflation in the outyears for this program. All we are trying to achieve by the Pursell-Penny amendment is to abide by that budget resolution, keep the funding level frozen in fiscal year 1986 and abide by the budget resolution numbers in those outyears.

Again, I join the gentleman in offering this amendment and I urge its adoption.

Mr. PURSELL. I want to congratulate the gentleman from Minnesota. There has been a bipartisan effort consistently on the floor this year. I think that in looking at the numbers of Democrats, there are at least one-third of the number on the gentleman's side of the aisle who have consistently voted to put a freeze level to the authorized and appropriation level. And, might I add, 90 percent of House Republicans, 165, have voted consistently in support of freeze amendments. If we cannot do that, if we cannot achieve just a basic freeze level this year, and this obviously will be the first big test of the House as a budget buster, we are not even going to accomplish, let alone $50 billion, the opportunity to achieve only the $32 billion in cuts a freeze provides. The test today is going to be perceived publicly. If you vote against the amendment, you're providing an opportunity to bust the budget and forget the budget resolution and all the good efforts that have gone heretofore by the Budget Committee. No single bill should stand out, regardless of the merits of the program. I serve on the Labor-HHS Subcommittee of the Committee on Appropriations. I can think of a lot of great programs for nurses and education and student aid and all of the other programs. But we have to bite the bullet, and if we can stay within the 1985 levels, we have made a major contribution toward reducing the Federal deficit and the burden it places on this Nation's taxpayers. Let's be consistent in defense and discretionary programs, and vote to freeze this bill.

Mr. PENNY. If the gentleman will further yield, did the gentleman share with the membership a few moments ago the list of authorization bills that have already been frozen by a vote here in the House?

Mr. PURSELL. Yes.

Mr. PENNY. I think it might be helpful if the gentleman would repeat that list, just to remind the Members that we are all on record, or many of us are on record, in support of those budget freezes for other authorization bills as they came before the House earlier in this year. All we are asking for today is to continue that trend. We have made a commitment to at the very least freeze authorizations at fiscal year 1985 levels, and the amendment we are offering today continues that pattern. Again the gentleman might read the list of programs.

Mr. PURSELL. I will read those very carefully. The first budget freeze amendment was to the NASA authorization, the first major authorization bill this year, which was passed on April 3, 1985, by a vote of 369 to 36, with a 4.8-percent or $376 million savings, staying at the 1985 level.

Next was the National Science Foundation authorization bill, a 6.1 percent or $98.3 million saving. That vote was 407 to 4.

Third, the National Bureau of Standards authorization bill, an 11.2 percent or $16.1 million savings, 398 to 2.

I might point out at that time, after those 2 recorded votes, the chairmen of some of the respective jurisdictional authorization committees began to offer their own amendments to reprioritize their programs to come within fiscal year 1985 appropriated levels. I credit the authorizing committees who have done that.

The State Department authorization was next, on May 9 with a 0.7 percent or $27.6 million savings, 398-to-1 vote.

Then the refugee assistance amendment, which I offered, a 10.8 percent, or $56.2 million davings.

The CHAIRMAN. The time of the gentleman from Michigan [Mr. Pursell] has again expired.

(By unanimous consent, Mr. Pursell was allowed to proceed for 5 additional minutes.)

Mr. PURSELL. The Refugee Assistance Act freeze amendment vote was 278 to 112.

The defense authorization bill freeze amendment was offered by Chairman Les Aspin, as the Members will recall, which the majority supported in the freeze movement effort, and it was a 3.3 percent, or $10 billion savings, a 301-to-115 vote, a 3-to-1 ratio on the floor—bipartisan.

Then, the foreign assistance authorization freeze was done on a voice vote, a savings of 3.2 percent, or $412.6 million in which both the gentleman from Michigan [Mr. Broomfield] and the gentleman from Florida [Mr. Fascell] offered—a freeze level in their committee and authorization bill. That passed on a voice vote just recently.

So we have had seven out of seven, and a track record of consistency. I think the House must stay at that consistent level in order to accomplish at least a $32 billion level of savings in fiscal year 1986.

Mr. PENNY. I thank the gentleman.

Mr. TAUKE. Mr. Chairman, will the gentleman yield?

Mr. PURSELL. I yield to the gentleman from Iowa.

Mr. TAUKE. Mr. Chairman, I want to commend the gentleman for his leadership on this issue. As he has just indicated, over the past several weeks a majority of us in the House of Representatives have been able to vote for and successfully pass freezes on all of the bills, authorization bills, that have come before this body. And once again, as the gentleman points out, we are facing a moment of truth. We do have before us a bill which has a very substantial increase over current spending levels. If I understood the gentleman correctly, it is about a 77-percent increase; is that correct?

Mr. PURSELL. That is correct.

Mr. TAUKE. And that kind of increase can no doubt be justified if we look only at the needs that are out there in the country. But the problem is if we look at the needs in any given area, they far outstrip our ability to pay for the solutions to all of those problems which confront us, which means that somewhere along the line we have to prioritize and make hard judgments.

I think the gentleman is asking us to make some very hard judgments here today, but is something we have to do now in order to be able to have the resources later to maintain current levels of funding and also to be able to continue current efforts to deal with some of these ongoing problems. If we do not deal with this budget problem now, we are not going to be able to deal with any of the other problems that this bill and others would like to address in the future.

So I commend the gentleman for his effort and I hope that a majority of the Members of the House will continue with this tough, ongoing, plodding effort to try to hold down the deficit and reduce expenditures here at the Federal level.

Mr. PURSELL. I congratulate the chairman of the 92 Group, Mr. Tauke of Iowa, for his outstanding leadership on the budget resolution. As you know, our particular group has drafted what we call a balanced, fair program, and I think the issue here is one of fairness to all the programs, whether it be clean water, student aid, the defense budget, foreign aid, we have tried to establish a consistent principle here, and consistency is an important issue.

I would like to call it discipline. It is a sense of discipline that the House for the first time this year has got a new historical track record that the Nation is watching.

I call that discipline. It is tough; I know these are popular programs. I have been here 9 years; I have been a former State senator. I knew it is easy to have a nice project, go out there and make a press release and have a nice conference back home that you have got a great project to help improve the quality of your community.

But when you go back to the communities today, they are talking about the deficit. They are talking about getting the House in fiscal order for this Nation. I think Congress must look above those popular programs and say let us stay within the 1985 level. Let us keep it at 1985. Let us be fair; let us have a balanced program. Go across the board and ask every single agency and every appropriation committee and every authorization committee to be fair and to discipline themselves to that fiscal year 1985.

So I ask the House today to look beyond just the popularity of a specific project and try to discipline ourselves today for a freeze amendment which will continue the program, but will give us some sense of fiscal responsibility for this Nation.

Mr. ROE. Mr. Chairman, I rise in opposition to the amendment.

Mr. ROE. Mr. Chairman, I certainly want to thank our distinguished colleagues for a very splendid presentation. I know it is sincere and from the heart.

I want to use some of the words that some of my southern friends use: "My daddy taught me." My daddy taught me one thing. He said, "More mistakes are made from lack of facts than from poor judgment."

Now, I think the House ought to know a couple of points. The administration's bill that was submitted to the Congress for consideration was a 4-year bill. This bill that we have before us is not a 4-year bill, it is a 9-year bill. It is a 9-year bill. On the basis of that, we are dealing with twice the amount of time than the administration has spoken to and as was addressed in the letter that came to Mr. MICHEL and to Speaker O'NEILL from Mr. THOMAS.

In that very same letter from Mr. THOMAS, Mr. THOMAS complimented the Public Works Committee, and I quote. He said:

> The administration is committed to reauthorization of the Federal Water Pollution Control Act at funding levels which will continue to move us towards meeting the goals and objectives of the Act. Earlier this year the administration sent to the Congress legislation proposing a 4-year, $7 billion reauthorization Act. The Committee, on Public Works and Transportation responded to the administration's funding proposals by reducing the authorized level for the Construction Grants Program from $5 billion to $3 billion.

That is in that letter.

Therefore the Public Works Committee has been extraordinarily responsive, perhaps with even tears in our eyes. The committee is very responsible as far as budget costs are concerned. The operation was a success but the patient died.

We speak of the moment of truth. We say this is a freeze we are talking about, and it is a budget-buster. It is not a freeze. This is cutting the program in half. Literally and figurally cutting the program in half. EPA has told us that; they thanked us for our help. They want to cut it further.

For the benefit of the Members, so that you know the facts, and more mistakes are made from lack of facts than from poor judgment, the administration bill was a 4-year bill and would totally phase out the grant program in a 4-year period of time—in case you did not realize that.

There was a report that has just been issued and sent here to the Congress and dated July 6, 1985, from the Comptroller General, and he speaks of the problems in a review of the program. He makes the following comment, which I would like to get into the RECORD, so the Members know what they are going vote on.

It says and I quote from this Comptroller General report of the U.S. Government:

"The Environmental Protection Agency's EPA Construction Grant Program awards local communities grants to plan, design, and build wastewater treatment facilities," and it explains that. And it says, "Between the years of 1972 and 1985 we obligated $45 billion for Federal grants."

Now here is the point. For all of you that have amendments that you wanted to add today, and did add some of them, when they talked about phased and segmentalized programs and partially completed programs all over the country, EPA and the Comptroller General make the statement that the money needed for this bill to complete the obligations that Congress spoke to is an additional $109 billion to the year 2000.

One of my dear friends made the point of view about the illness of our public body, and they made the point of view of the cancer, the economic cancer on our society. Let me tell you about Americans in this country. Every child and every man and woman and mother and father, if they were to invest their capital money in this country, they would not be sending $11 billion in foreign aid which we just voted on to every country throughout the world. Not that it is all wrong; the aid helps to build their water supplies and to correct their pollution and their sewage. I am not against feeding Ethiopians, but we are sending money to do that, and we cannot do that here.

We talk of cancer on our society. Come and walk with me and walk in my town, I will take you in an area that I do not know the answer to. We have Thorium pollution. It was not the peoples' fault; there are about 70 families living in the area. They are desparate as to what to do because it is a problem that affects their kids in the future and mutations and everything, and nobody knows the answer. That material is leaking into the water supply that is going into our drinking water. We do not know what to do with it; we have a special program trying to solve it.

There are love canals all over this country that we are faced with. The toxic waste issue. Is water pollution and the water supply of the Nation in the same category, in your minds, as military and as education? And as food stamps? Or are we coming back and saying that man and woman kind and the human race can survive without water?

The CHAIRMAN. The time of the gentleman from New Jersey [Mr. ROE] has expired.

(By unanimous consent, Mr. ROE was allowed to proceed for 5 additional minutes.)

Mr. ROE. The human race cannot survive without water. A few days and it is over. Now, I do not put the quality of the water and the sustenance of the very human lives of this country into the same category as MX missiles. It is not one and the same. We are not talking about equity and balance in budget financing. We are talking fundamentally about the absolute health of the people of this country. When we speak of the economic cancer, let us speak of the cancer of the people that they are getting from this polluted water supply.

I for one in this House am fed up to the teeth of listening to this point of boondoggles and that what we are doing that is logrolling. There is not one Member in this House, Democrat or Republican alike that has not come to the Public Works Committee if you had a dam problem, a water supply problem, a pollution problem, everything you have spoken to.

I resent the sanctimonious point of view where people come to this floor and they attempt to mix up the needs of the American people, the fundamental purpose of life, and compare it with anything else we have to vote on.

I think that if we cut this bill one more penny, you are destroying the pollution control program of this country, and you are destroying the water supply of this country in every State of the Nation; all the areas we are responsible for. I would humbly suggest that every person that is here and that is listening would remember that when you vote on this issue, and we are going to ask for a vote on this issue you look at this point of view. When you go home, do not speak to the budget issue; of course you have to tell them you want to cut the deficit; of course we do. But you answer the question, when they turn that tap on and they flush that toilet and they make their food, and they produce their goods, they cannot do it without a clean, safe water supply. There is nothing in this Nation, other than the water we drink and the food we consume, that makes this country as great as it is.

So I would respectfully suggest that my colleagues join with me in the defeat of this amendment.

Mr. MORRISON of Connecticut. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in support of the amendment. I think the gentleman from New Jersey has given a very eloquent statement about the importance of what is involved in this legislation. I do not think there are many Members of the House, if any, who would disagree with him about that importance.

□ 1410

In fact, when most authorizations come here to the floor, we can make those kinds of statements. Some of us agree more, some less, with particular bills. There are many important things to be done by this country to solve problems that we have.

We also have this budget problem, and it cannot be minimized. That $200 billion deficit is not a joke; it is also not an accident. It has been visited upon us by some very poor choices in the past. It will not be solved by continuing bad choices.

We have gone through a budget process. We have passed a budget through this House. Tomorrow we are going to consider making the budget resolution that we passed in this House the budget resolution we are going to live by for the rest of this fiscal year, if the Senate does not come forward with an agreement that we can vote on.

What does that budget say? That budget says that programs in this category are frozen for 1986; that in years 1987 and 1988 they will get a half of the cost-of-living increase.

What does it mean to ignore that? In the authorization process that we are in right now perhaps it does not mean anything. Perhaps it is just a symbol. Perhaps we can pass this bill without freezing it and somehow suggest that it is not a problem; it is a statement that we are making in favor of fighting water pollution, which we are all in favor of.

But the fact is that the money is not there in our budget to deal with this problem, unless, of course, we really do not mean what we said in the budget, unless we mean that this money that is needed to raise the expenditures $2 billion above current spending levels is somehow going to come from somewhere else, and yet each and every program, as we hear about it, is critically important.

The freeze is tough medicine. It is not perfect. The budget process sought to even out some of those bumps, to make concessions in certain areas of special need. This was not one of those areas. This area in our budget, which a large majority of this House voted for, froze the spending level for this program.

All we are doing in this amendment is putting further discipline into that process. It is every bit more important for the fact that we do not have a budget resolution, for the fact that we do not have other ways to discipline this spending. So when it comes to us on an authorization, we have a choice: The symbolism of high authorizations that we cannot fund, or the discipline of authorizations that match the budget. I think the discipline is the better route. I think it will cause us to focus on if we want more for these programs, the money will have to come from somewhere else. We have not done it in the budget for this year. Perhaps we will do it in future years if we think it is important, but let us not kid ourselves. Let us not authorize an amount of money that we have no willingness or ability to pay for, and tell the American people that there is more available to do a job. If they want more available to do this job, let them support the resources to do more, but in the budget we have today, $2 billion more than last year's level is just plain not available.

Let us speak the truth in this vote and pass the amendment.

Mr. SNYDER. Mr. Chairman, I rise in opposition to the amendment, although I must admit that it is somewhat in reluctant opposition because we all know the fiscal situation. However, I think that we have to look at this objectively.

H.R. 8 as reported by this committee and as it is before us today is quite similar to H.R. 3282, which passed the House in the last Congress by an overwhelming vote of 405 to 11. There is one major exception, and that is that our committee this year reduced the level of authorization by over $7 billion compared to the bill that passed last year 405 to 11. Four Members thus far have spoken in favor of the amendment. I must commend them on their new-found morality because they all voted for last year's bill which was $7 billion higher last year.

The gentlemen who offered the amendment are seeking to continue an effort wherein every bill that comes before the House is reduced or frozen at the level of last year's appropriation. I understand that objective but I must, frankly, say that this approach sometimes ill advisedly makes sacrosanct last year's appropriation decisions, most of which we all remember were made in the context of the continuing resolution adopted in the waning hours of the 98th Congress without much scrutiny of the policy decisions made in the appropriations initiatives.

Mr. Chairman, every time the American people are surveyed on the issues, they rank as one of their highest priorities clean water. The gentleman from New Jersey addressed that very eloquently, the need for clean water. As Members know, the major sources of pollution of our water are threefold: One, industrial discharges; two, municipal or publicly owned treatment plants; and three, nonpoint sources.

In 1972 the Congress embarked this Nation on a program to clean up pollution from these sources. Industry has invested billions of dollars to achieve the stringent clean-up standards of the Clean Water Act. However, the progress made in clean-up of municipal pollution and nonpoint pollution has been woefully inadequate.

In the municipal area, one of the prime reasons we have not achieved the goals of the Clean Water Act has been the failure of the Federal Government to appropriate the funds necessary to meet the commitment of the Federal Government for their share of project costs. Appropriations have plummeted from a high of $7 billion to the level mentioned in the colloquy today of $2.4 billion.

Additionally, in the 1981 clean water amendments, the Federal share of the eligible projects was reduced from 75 percent to 55 percent, and in that conference we eliminated most Federal funding for other types of projects. In short, the Federal Government, primarily for fiscal reasons, has reduced its participation in the efforts to clean up our waterways and transferred that burden to the States and the localities.

What has been the result? Eight years after the compliance deadline mandated in the 1972 Act, we still have nearly one-half of our municipalities that are not in compliance.

Mr. Chairman, nonpoint sources of pollution may account for over one-half of the pollution loading of our waterways. Even though the 1972 act stated that by July 1, 1984, we would achieve the national goal of fishable and swimming waterways, we are a long way from any realistic expectation of that noble accomplishment.

So how does H.R. 8 respond to these problems? First, with a program and a plan for nonpoint source pollution cleanup; and second, with a 5-year continuation of a minimal municipal funding program and a proposal to get the Federal Government out of the program once and for all by establishing a State-managed revolving loan fund which would once and for all end Federal funding by 1994.

I would also call to the attention of my colleagues that the other body has passed S. 1128, which has very similar authorizations for the construction grant program and for the nonpoint source initiatives. I believe it extremely unwise for the House to gut the municipal and nonpoint source program.

In the last Congress, only 11 of our colleagues disagreed with that statement and the bill was $7 billion more over the 4-year period. If we are for clean water, as is the American public, I hope you will stand with the committee and oppose the anticlean water amendment offered by Messrs. PENNY and PURSELL.

While I would say to these gentlemen that I might have been inclined to support a more limited amendment to reduce authorizations in the bill, I believe this sweeping cut in these two vital programs guts the clean water program and is extremely ill-advised.

The CHAIRMAN. The time of the gentleman from Kentucky [Mr. SNYDER] has expired.

(By unanimous consent, Mr. SNYDER was allowed to proceed for 2 additional minutes.)

Mr. SNYDER. I say, too, to the gentlemen, if they feel so strongly about reducing the construction grant program, as I am sure they do, I would note for the next 4 years their States will receive $600 million under the program. Of course, this would eliminate the Federal share of clean water projects in their States if we pass this amendment. It would eliminate many of them all across the country. If any of the ladies and gentlemen who are going to be voting on this would like to see the list of projects from their States, we have that available.

Mr. PURSELL. Mr. Chairman, will the gentleman yield?

Mr. SYNDER. I have talked about the gentleman from Michigan, so I will yield to him.

Mr. PURSELL. I thank the gentleman for yielding.

Mr. Chairman, I come from the great State of Michigan, and I acknowledge that we have had a number of grants over the years in the water quality bill.

Mr. SYNDER. You have some currently, I might say, in this bill.

Mr. PURSELL. Right, and I suggest the taxpayers now are concerned about the fiscal effort. You must realize that we, as a Congress, and the Treasury, are borrowing 20 percent of our revenue.

□ 1540

So how can we give the States this excessive amount compared to fiscal year 1985 and still borrow money and not be able to bring our interest rate down and not stimulate our housing industry and our auto industry?

I am suggesting that we are not gutting the bill. We are trying to stay within the budget, for fiscal year 1986 with inflation increases for the out years. That is all we are asking to do.

Mr. SYNDER. Mr. Chairman, if I might respond, I agree totally with the gentleman that our deficit and our national debt are intolerable, but I want to say to the gentleman that those things will not amount to much if in fact we do not have clean water for our people to drink, if we do not clean up the illness around the country. We have a bigger cancer rate on the Ohio River than anyplace else, and it is attributable, most people think, to polluted water. If we just want to let the water that we drink get polluted and get contaminated, and our people get sick and die, we will not be collecting many taxes, either, because there will not be any people to pay or economic development to support those taxes.

The CHAIRMAN. The time of the gentleman from Kentucky [Mr. SNYDER] has expired.

(On request of Mr. LEVIN of Michigan, and by unanimous consent, Mr. SNYDER was allowed to proceed for 2 additional minutes.)

Mr. LEVIN of Michigan. Mr. Chairman, will the gentleman yield?

Mr. SNYDER. I yield to the gentleman from Michigan.

Mr. LEVIN of Michigan. Mr. Chairman, I appreciate the distinguished gentleman's yielding.

I have been listening to most of this debate, and I do not really understand—and I sit on an authorizing committee—how the committee expects us to vote for an authorization level that is $2 billion above an appropriation level that will be set or that has already essentially been set by action of this House and that will be reasserted hopefully within 24 hours. I do not understand it when the gentleman makes his arguments about the urgency. And I agree with the urgency. You seem to be saying what to the Appropriations Committee? To go beyond the level that will be within the budget resolution or to ask for a waiver?

Mr. SNYDER. No, no.

Mr. LEVIN of Michigan. I do not understand it.

Mr. SNYDER. Well, of course, the Appropriations Committee will set the level of expenditures year by year. This is a 9-year bill, as Chairman ROE has pointed out, and this amendment just sets a cap on the whole thing.

I think perhaps what is confusing the gentleman from Michigan is that, when you talk about the $4 billion as opposed to the $2 billion, the assumption is made there by CBO that all of the money in the bill for individual project-specific authorizations would be spent in that first year, which just is not true. It is only an assumption, an artificiality of the CBO costing procedures with respect to the calculation. The Appropriations Committee will set the binding funding levels each year during the 9 years covered by this bill.

Mr. LEVIN of Michigan. It is the gentleman's assumption that the Appropriations Committee, acting under this authorization, would come out for next year within the $2.6 billion that is set in the budget resolution?

The CHAIRMAN. The time of the gentleman from Kentucky [Mr. SNYDER] has again expired.

(On request of Mr. LEVIN of Michigan, and by unanimous consent, Mr. SNYDER was allowed to proceed for 2 additional minutes.)

Mr. LEVIN of Michigan. If the gentleman will yield further, I am asking these questions because I think the Members who are here and, even more so, the Members who are watching away from here, want a clear-cut answer. We are talking about clean water. We want a clear-cut answer as to how an authorization bill fits within the budget resolution, and most of us are not going to be satisfied, I think, by the answer that it is only an authorization bill. So how do you fit them together?

Mr. SNYDER. Mr. Chairman, the gentleman has asked a multiple question there.

First, let me say that the budget resolution sets caps by budget functions rather than by specific programs. For instance, many of the issues we deal with in our committee relate to transportation. This is Budget Function 400. The total in that function covers programs in many areas affecting many committees. Within the total, it is up to the Appropriations Committee to split that money between perhaps the Coast Guard over at merchant marine and other programs that we have. So first we have that difference.

Second, it is the function of the authorizing committees to receive testimony and establish what they believe to be the proper identification of the needs of the country in a specific program. It is then the function of the Appropriations Committee to set the priorities as to how and when appropriated funds will be spent. And they will continue to do that under this bill. But what the amendment proposes is to restrict the ability of the Appropriations Committee to set those priorities.

Mr. LEVIN of Michigan. Mr. Chairman, if the gentleman will yield further, I understand that. I appreciate his answer, and maybe the subcommittee chairman can make it clear. But I think we have been saying that this year is a different year than previously and after the budget resolution is hopefully passed tomorrow, we are going to know the allocations within accounts, and we want to know before we vote on authorization bills how those fit into the budget resolution. So I say to the gentleman you need to come up with a clear answer right here and now.

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. SNYDER. I yield to the subcommittee chairman and let the gentleman from New Jersey take a shot at answering the question.

Mr. ROE. Mr. Chairman, the gentleman is making a fundamental assumption that the budget is going to drive the will of the House. I have to call to the gentleman's attention the fact that the function and the operation of the House of Representatives and its respective committees must be taken into consideration, and I do not say this to the pedantic at all.

The CHAIRMAN. The time of the gentleman from Kentucky [Mr. SNYDER] has again expired.

(On request of Mr. LEVIN of Michigan, and by unanimous consent, Mr. SNYDER was allowed to proceed for 3 additional minutes.)

Mr. ROE. Mr. Chairman, if the gentleman will yield, the budget is not driving the authorizing committees at this time. Our job is to present to our Appropriations Committee, and they to our Budget Committee, what the overall balance is. We must remember that although the Appropriations Committee may make a determination, they still have to come back to the House to vote on the bill.

Now, what we are talking about here is the will of this committee and the will of the House. We are not quarreling at all with the Appropriations Committee. We are not quarreling with the budget process whatsoever. We are simply saying that in the judgment of the House, or at least this committee at the moment until we vote, we believe those standards and those levels of appropriations ought to be set higher. The Appropriations Committee goes through its evaluations, they hold hearings, and they either agree or disagree. They could come right to the top of that authorization.

We are caught here in a moment where we have an ersatz budget situation, a budget that is floating back and forth. No budget has been adopted. We are voting on a 9-year bill. We are not trying to abrogate appropriations. That is not our function. We are here to say to the House of Representatives that this is the need we see for our people and this is what it means for our respective States.

We are not going contrary to the budget: we are not going contrary whatsoever to appropriations, as I see the facts before us and in answer to what you are asking. Let us not forget that the Members of the House have the right to determine whether the Appropriations Committee is doing the right thing, too. They come in and vote on the appropriation bills.

Mr. LEVIN of Michigan. Mr. Chairman, if the gentleman will yield further during the rest of his time—and I hope perhaps there can be a fuller explanation after you have finished because this is a critical issue—I say to the distinguished subcommittee chairman that what we did when we voted for the budget resolution, in the judgment of the Members who voted for it, was indeed to set the parameters within which we were going to operate this year. That is No. 1. No. 2, in that sense the budget resolution is driving the rest of the process.

The CHAIRMAN. The time of the gentleman from Kentucky [Mr. SNYDER] has once again expired.

(On request of Mr. LEVIN of Michigan, and by unanimous consent, Mr. SNYDER was allowed to proceed for 1 additional minute.)

Mr. ROE. Mr. Chairman, I wonder if I could just interrupt the gentleman on that point, and I will ask the gentleman from Kentucky to yield.

Mr. SNYDER. Yes; I yield to the subcommittee chairman.

Mr. ROE. On the final budget resolution, if what you are saying is fact—and I know the gentleman has enormous prestige and is well-regarded—then there is no quarrel between our Speaker or between Mr. DOLE and the White House on Social Security and there is no quarrel on military. Those items are open yet. That is not what our function is here today at all.

Our function is, as the distinguished gentleman from Kentucky has said, to present to the House the needs of the Nation. We are willing to work with the Appropriations Committee and the Budget Committee, and the argument is, do we want the authorization levels to be artificially cut at this point? If they are, we cannot deal with what the will of the House is in appropriations then because we are reducing what the authorization system is about in the first place.

Mr. LEVIN of Michigan. Mr. Chairman, will the gentleman yield?

Mr. SNYDER. I yield to the gentleman from Michigan.

Mr. LEVIN of Michigan. Mr. Chairman, tomorrow we are going to act on the budget resolution. I think we have different understandings of the budget process, and I think we need to air it out right here today.

The CHAIRMAN. The time of the gentleman from Kentucky [Mr. SNYDER] has expired.

(By unanimous consent, Mr. SNYDER was allowed to proceed for 30 additional seconds.)

Mr. SNYDER. Mr. Chairman, I just want to say to the gentleman that there is nothing in this legislation that violates the budget resolution, assuming that it were enacted as we passed it here in the House, including its energy and natural resources function level. Our bill might set a different priority than that based on the assumptions that the Budget Committee made as to what money was going where, but insofar as violation is concerned, there is plenty of money in category 300 to cover the funding authorization levels in H.R. 8. There is $13.1 billion in category 300 of the House-passed budget resolution for fiscal year 1986, and our bill does not approach that level.

☐ 1550

Mr. HOWARD. Mr. Chairman, I move to strike the requisite number of words.

(Mr. HOWARD asked and was given permission to revise and extend his remarks.)

Mr. HOWARD. Mr. Chairman, we may possibly be losing our perspective here at this time. We are not talking solely about dollars, solely about deficits. We are talking here about clean water. We are talking here about the future of our country.

When I first came to this body over 20 years ago, in the Public Works Committee there was a gentleman, a Representative from the great State of Minnesota, who I feel was a great statesman. His name was John Blatnik. He was chairman of the Water Resources Subcommittee.

Back in 1965 he saw long before these great environmental movements that we were in deep trouble in this country as far as water is concerned, that we were ruining and polluting the waters of this Nation and that our future could be in jeopardy.

Water as we know is at the same time the cheapest and yet the most valuable commodity on this planet. Nothing can grow, nothing can live without it.

So that committee worked for several years and they came up with the first clean water bill in the Congress. We found that this was a problem that we could handle. Water pollution control may be one of the problems that you can solve by throwing money at it. We know where the pollution is. We know where the pollution comes from. We do not need great technical breakthroughs in many areas. All we need is the commitment and the will and if we put those funds into these projects, we will clean up the waters.

Down through those years, the late 1960's and the 1970's, we saw a slow gradual improvement in the quality of water in this country. To pollute water is very quick and very cheap. To clean it up takes a long time and is expensive, but we were working by the end of the 1970's at a rate of Federal spending of $5 billion a year to help the communities build adequate sewage treatment plants and clean up their waters; but come 1981, that was changed. We found that instead of a commitment of $5 billion a year, we could only save $2.4 billion. We cut it by more than half, cut it $2.6 billion 1 year, and the next, and the next.

People talk about the fact that we have to cut this program so that we can help the budget. Well, during all those past years when they took $2.6 billion away from this small part of the budget [bill], the deficits went up and up; so cutting water pollution control apparently is not going to solve the deficit problem. They took that money from cleaning of the water and put it into other areas of Government spending and then added more spending, because the deficits have gotten bigger, while the money for water pollution control has been cut.

And what has happened? Are we continuing to clean the waters? No. We have seen just in the last 4 or 5 years that we are starting to go downhill again.

One thing I particularly resent maybe as chairman of this committee is the idea that when people get up and talk about these programs and this legislation, they talk about Members going home and talking about their projects and we get the scent of pork barrel once again, as though everything that comes out of this committee is something that is not needed, just a waste of time.

Well, I will say it is a lot more serious than that across this country in the small towns and in the great cities. We have a situation today with New York City, maybe we are aware of it. It needs water pollution control. It needs an adequate system that is being built that will not be built in time if we pass this amendment. There are 220 million gallons of raw sewage a day being pumped out into the Hudson River going down and polluting the communities downstream.

Fixing that problem, building this plant, that sort of pork barrel, something that should not be done, a waste that is very, very important to the people in that area that it go forward.

It was mentioned by one of the sponsors of the bill that we have a debt that we owe to our citizens back home on this deficit. We have a debt to our people today, but we also in this Congress have a debt to our citizens of the future. Are we going to say that we are going to let this go downhill? We will let the pollution increase and tell our children and grandchildren that we are going to do that because we are a little selfish. We are going to save a couple bucks and you will have the big problem after we are gone. I do not think we can do that.

The real vote here today is whether we are going to keep a commitment to help the States and local communities clean up this environment.

The CHAIRMAN. The time of the gentleman from New Jersey [Mr. HOWARD] has expired.

(By unanimous consent, Mr. HOWARD was allowed to proceed for an additional 2 minutes.)

Mr. HOWARD. Mr. Chairman, I have asked for 2 additional minutes because I want to yield to the gentleman from Massachusetts.

That is the vote right here. Even if we defeat this amendment, we are still way, way below where we were in the 1970's. We have taken our cuts. We have taken more than our share and it has not brought us a balanced budget. This amendment will not do it. All it will do is put us and the future into a deeper hole, so I hope we will defeat the amendment.

Mr. FRANK. Mr. Chairman, will the gentleman yield?

Mr. HOWARD. I yield to the gentleman from Massacusetts.

Mr. FRANK. Mr. Chairman, I thank the gentleman. I want to congratulate him on the great work he has been doing here.

I want to express my hope that the amendment will be defeated. This is an example of mindlessness. The freeze applies to the starved and to the bloated alike. You take areas of budget that have been pampered and upon which billions of excess dollars have been lavished for years and you take areas such as this that have already been cut below what they should have been and then you say, now we are going to freeze you equally. We are going to freeze you at this level. We are going to freeze you at the low level.

It is an abdication of legislative judgment and when people congratulate themselves for the courageous action they are taking, we are told to vote for the courageous freeze, maybe it is courageous to check your brain at the door and treat everything alike and ignore past history about what has been overspent and what has been underspent. I do not think it is.

In addition, I would say the gentleman makes a good point about the municipalities. There are municipalities that are under legal obligation to clean up their waters. What you do here is you do not save taxpayers' money. You shift it. Some local taxpayers will get hurt. They will still be under that legal obligation. You will be in a situation of taking back with one hand while you insist with the other.

Federal mandates will say to go ahead and clean it up and spend the money, but we will take the money back.

Finally, we are told we are borrowing too much. There are areas where borrowing is inappropriate, but if we were a private business, all this would be borrowed because we are talking now about important capital projects. We do not use these up in 1 year. It is good fiscal planning to look at these kind of long-term projects that are going to make a continuing contribution to economic development, to health and to safety, and to deal with them on a somewhat streched-out basis.

We are not talking here about a group that is going to be consumed.

So I congratulate the good work the committee has done and I hope the amendment is defeated.

Mrs. BENTLEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, today I rise in opposition to the Pursell-Penny amendment. I wish to express my support of the passage of H.R. 8, the Water Quality Renewal Act of 1985, or better known as the Clean Water Act. With enactment of the Clean Water Act funding for various clean water programs and revision of regulatory requirements will be reauthorized.

In September 1985, the $2.4 billion a year Construction Grant Program to build municipal sewage treatment plants will expire. Maintenance and new construction of water treatment plants of our Nation directly affects every Member of this Congress, as has been pointed out by our distinguished chairman and subcommittee chairman today. Enactment of H.R. 8 will provide reauthorization of construction grants to maintain and construct our waste water treatment plants.

The Clean Water Act is needed to help achieve control of pollutants that invade our Nation's water supply. In my home State of Maryland, the Chesapeake Bay plays a vital role in our State's economy. Many of our industries are directly affected by the condition of the Chesapeake Bay, as are those in Virginia, Delaware, and Pennsylvania.

In H.R. 8, provisions are indicated to significantly assist controlling nonpoint source pollution. Fifty percent of the water pollution of the upper Chesapeake Bay results from land runoff pollutants. Enactment of H.R. 8 at the current funding levels will provide an increase in participation by local governments and regional organizations in controlling water pollution.

I might point out here, Mr. Chairman, that the State of Maryland has enacted legislation establishing a critical areas commission, so that it will do its role in keeping that water clean there and they will now control everything that is built within 1,000 feet of the shore; so Maryland is doing its share. The other States are joining in and I say now is the time for this Congress to act to ensure that our Nation's waters are made safe from pollutants. Support of the Clean Water Act at this time is cost effective and environmentally sound.

Mr. Chairman, I urge my colleagues to support the position of the Public Works Committee and vote "no" on this amendment.

□ 1600

Mr. OBERSTAR. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the issue here has been raised as one of budget deficit cutting and responsibility toward the large issue of budget deficits, and that, the proponents and offerers of this amendment argue is the justification for making further reductions.

First point: The Public Works and Transportation Committee was directed by the budget resolution to make reductions of $600 million in its functional category, and that $600 million reduction in budget authority was made. We have complied with the budget resolution that passed this body, and that Members voted for.

But let us go back a few steps in time. Some of the speakers earlier did not have the institutional memory because some of them were not even here when the Budget Resolution of 1981 and the Reconciliation Act were adopted. In that year, the Public Works and Transportation Committee agreed to a better than 50 percent reduction in the commitment that the Congress and the country would make to the cleanup of the Nation's wastewater discharges. We reduced the authorization for construction grants that was included in the 1972 and 1977 act amendments from $5 billion to $2.4 billion. We further went back and adjusted even the estimates on need from $128 billion to clean up the Nation's wastewater discharges down to $24 billion that the Federal Government would commit to clean up the Nation's wastewater discharges.

This committee has made enormous reductions, to the bare bones of the kind of effort that is needed to keep pace with cleaning up our lakes and streams, an effort that has been tremendously successful.

When the cities of Minneapolis and St. Paul discharge raw sewage into the Mississippi River, it affects the city of Winona which is a downstream user of that water, as it does Dubuque. I see the gentleman from Iowa is interested. And if those cities have an interest in clean water, it is in seeing that this problem is actually funded so that other upstream users of waters and dischargers will clean up their wastes. As the gentleman from New Jersey [Mr. HOWARD] said a moment ago, New York discharging into the Hudson River raw sewage of 220 million gallons daily affects the shores of New Jersey and the people who live along those waters.

Mr. VENTO. Mr. Chairman, will the gentleman yield?

Mr. OBERSTAR. I am glad to yield to the gentleman from Minnesota.

Mr. VENTO. I want to commend the gentleman for his statement. I think he is providing some help for Members in terms of the budget issue, and especially, of course, he mentions St. Paul and Minneapolis. We are in the midst of trying to address the problem of storm and sanitary overflows. In dealing with that effectively, I think we see material progress.

But if the aggregate amounts in this bill are not authorized and subsequently appropriated, it means the States will not be able to help with that particular program, and that burden will fall almost exclusively on the residents of our area without any help from the State; and I think we need it. I think there is a broad public benefit in this.

Furthermore, I would like to point out to the gentleman we have made this progress. The gentleman from the 8th District in Minnesota I know can point with pride to the work he has done in this particular bill, and I want to commend him because he carries on that heritage we spoke of a little earlier, and our chairman did of Mr. Blatnik, and, of course, that is the district that my colleague in the 8th District represents, and the work that has been done in the Great Lakes, and the improvements in Lake Erie. All of this has been done and demonstrates the feasibility of the types of dollars we are talking about here in terms of providing clean water in our environment.

I think what the problem with this budget issue is, is not that we do not have a budget resolution, but we have all of a sudden 12 experts with different criteria for what constitutes the budget of the House. One has a 13-inch ruler, one has an 11-inch ruler, and they all have different standards, and by the time we get done we do not have any program, because that is the problem with not having a budget resolution. Everyone has their own standards and everyone has their own criteria, and the process to throwing out of any type of coherent policymaking that this Public Works and Transportation Committee wants to do with regard to clean water.

The CHAIRMAN. The time of the gentleman from Missesota [Mr. OBERSTAR] has expired.

(On request of Mr. VENTO and by unanimous consent, the gentleman from Minnesota, Mr. OBERSTAR, was allowed to proceed for 2 additional mintues.)

Mr. VENTO. I thank the gentleman for yielding and I appreciate his comments.

Mr. OBERSTAR. I thank the gentleman for his contribution and for his kind words, and for pinpointing the key issue here, and that is that cleanup progress has been made in our interstate rivers and interstate bodies of water such as the Great Lakes. And that is the focus of this and the whole point of this program to begin with, is to clean up the environment, and we have succeeded.

But if you cut further than in the judgment of the committee is wise and responsible to cut, you will not make that progress and will reverse the success of the last several years.

Remember the Cuyahoga River no longer catches on fire because we have cleaned up the discharges into the Cuyahoga River through this program of pollution abatement. There were no fish a few years ago in Lake Erie, and now fishing has returned as a major recreational, sport and commercial activity.

In the St. Louis River in northern Minnesota, there were no fish until we had the cleanup program on the St. Louis River discharging into Lake Superior, and now people are catching very sensitive fish to clean water, and that is the walleyed pike. We have similar success stories all across the United States.

But if accepted the amendment that was offered by the gentleman from Minnesota and the gentleman from Michigan, you will eliminate, you will severely cut back on the construction grants and you will severely affect the Revolving Loan Fund Program established, and you will severely reduce the nonpoint source control program. You will severely affect the nonpoint areawide planning program that sets up means of dealing with pollution abatement, the ground water contamination water program and the very expensive operating of the Clean Water Act, and the support that we give to the State governments to administer this program in a cooperative fashion with the Federal Government.

The CHAIRMAN. The time of the gentleman from Minnesota [Mr. OBERSTAR] has again expired.

(By unanimous consent, the gentleman from Minnesota, Mr. OBERSTAR, was allowed to proceed for 1 additional minute.)

Mr. OBERSTAR. In sum, this legislation is not an entitlement program. By providing the approval of the authorization in this legislation, we are not mandating and committing Congress irrevocably to a certain level of funding. The appropriations process can and will adjust to these numbers to suit the budget process.

But I want to make it very clear that this committee has done what it was directed to do in the budget process. It has made the cuts. We made them this year. We made them 5 years ago, and we have faithfully complied with this process.

The bill we present to you today is a responsible, cautious, conservative, I believe too conservative, approach to the funding needed to make progress and continued progress on the clean water program of the United States.

Mr. TAUKE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the members of the committee who have presented this bill have indeed done a wonderful job over the last several years in attempting to develop good policy in the water pollution control area. And certainly they have done an outstanding job today in making the case for expenditures of money in this area.

But I ask my colleagues to not lose sight of the fact that the recommendation from this committee is that we increase expenditures in fiscal year 1985 to fiscal year 1986 from $2.5 billion to $4.6 billion. Let me repeat that: We are currently spending $2.6 billion, and the figure authorized in this bill for the next fiscal year is $4.6 billion. That is a 77-percent increase.

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. TAUKE. I will be happy to yield to the gentleman from New Jersey.

Mr. ROE. Mr. Chairman, that simply is factually not correct, sir. It just simply is factually not correct.

The budget level this year is $2.4 billion. We are asking for in an authorization, which is part of this 9-year bill, yet to be dealt with by the Appropriations Committee, and yes, we are asking for $3 billion this year. We know we are not going to get that full $3 billion.

But anybody who tells you this is a 77-percent increase is totally, absolutely, unequivocably wrong. It is not the fact, and that bulletin that is floating around here is not factual, sir. It is not factual. We wrote the bill and we know that it is not factual.

Mr. TAUKE. Let me accept the gentleman's figure then for the time being. We will not quibble about the figures. It still is a substantial increase over current levels of funding.

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. TAUKE. Yes, I yield to the gentleman from New Jersey.

Mr. ROE. It is not substantial, we are not asking for that. The level of authorization and appropriation this year in fiscal year 1985 is $2.4 billion. We are simply holding that line. We are not quarreling with it. We reduced the committee's bill that the people voted on 405 to 11 in this House here last year, almost every Member.

Mr. TAUKE. Is the gentleman suggesting that this bill in essence maintains freeze and authorizes for fiscal year 1985 the same amount we spent in fiscal year 1985?

Mr. ROE. This bill does not do that. This bill comes back and says to the people of this House what to vote on. If the gentleman will yield further, in our judgment, we think this is the level it should be. We are an authorizing committee. Those are the needs of America in the authorization, and if the budget process decides differently, we have to, of course, be guided by that.

□ 1610

But anybody who says we are doubling the figures is absolutely, totally incorrect. We have cut the bill from last year, supported by 411 votes, we cut it down in half.

Mr. TAUKE. I thank the gentleman for his comments but I think what we are doing is comparing apples and oranges.

The gentleman wants to talk in relationship to the bill we approved last year rather than talk in relationship to the measure or to the current levels of spending.

Last year's bill was a 4-year authorization bill but we are not talking about comparing with last year's authorization bill. We are talking about comparing with current levels of spending. Now the gentleman and others have said that this program is more important than all of the others. I sit on the Committee on Education and Labor and on the Committees on Energy and Commerce and we have everybody coming before our committees telling us about how health care is more important and we would not want to shortchange the health of the American people, about how child care is more important, how education is more important, how food stamps are more important and ADC. When we come to the floor, we hear about a variety of other programs all of which are critical to the health, welfare, and well-being of the American people. The problem is if we continue as the gentleman from New Jersey wants us to do, to base our authorization bills on what we need, rather than on the basis of what we can afford, we are going to continue to overspend. And I suggest that the authorization committees have more responsibility than to just come to the floor with statements of what we need. The authorization committees have a responsbility to come to the floor with the best programs that can be fashioned within the limits of the budget resolution.

Putting it another way, they have a reponsibility to come to the floor with the best budgets or the best programs that can be fashioned within the limits of what we can afford.

The CHAIRMAN. The time of the gentleman from Iowa [Mr. TAUKE] has expired.

(By unanimous consent, Mr. TAUKE was allowed to proceed for 1 additional minute.)

Mr. TAUKE. Mr. Chairman, coming to the floor with statements of need is a contribution to the problem that we have in the Nation of huge economic difficulties. Coming to the floor with programs that deal with the need and the best way possible within the limits of our resources are really making a contribution to strong public policy.

The gentleman knows, as I do, that within a few hours we are going to be adopting formally some kind of limitation on the expenditures in this area which will be substantially below, without arguing about the figures, substantially below what is authorized in this bill. And while I think he had done a remarkable job defending the programs, the fact is we need to look at this in the context of all other programs and in the context of what we can afford.

On that basis it seems to me that we are compelled if we are responsive legislators looking at all the needs of the Nation to hold the line on this program for 1 year as we hold the line on all other programs.

We are not asking for cuts in current levels of spending, we are saying do not increase levels of spending.

Mr. EDGAR. Mr. Chairman, I move to strike the requisite number of words.

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. EDGAR. I yield to my chairman.

(Mr. ROE asked and was given permission to revise and extend his remarks.)

Mr. ROE. Mr. Chairman, I thank the gentleman from Pennsylvania most profoundly for yielding to me because I know I have had my chance. I think we have had an opportunity to express our views both strongly and emotionally. I want to make a point clear: I have been in this House 17 years, 17 years. I never expected to stay that long, 17 years.

I do not ever come to the floor of the House to defend anything; I come to the floor of the House with what I believe in, never to defend. I am not defending this program, not at all. But I would like to call your attention to something: This Congress is going to be spending \$1½ trillion, \$1½ trillion in the next 3 years. So do not talk to me about budget balances—\$1½ trillion to bury the MX, to put them on shelves, to do whatever. We are not in confrontation with that situation as far as the budget is concerned. It is in a situation that can wait. Come to the rivers and the harbors.You listened to the distinguished minority leader of the Committee on Appropriations. He came to us and he brought a great program and we applauded it from both sides. We talked about acid rain. Everybody said it is a great idea but somebody is going to have to pay for it.

We are not comparing this with education, we are not comparing it with transportation. We are saying fundamentally and basically in this country "Don't you understand that you cannot supply your family with water, with anything that has water in it unless you have the water supply to deal with?" Do we have to have to say to everybody that the raw dung—and I can use that word because it is in the dictionary and not meant to be profanity—is floating down river after river. Go to the beaches along our coast, go to our lakes; they are so fouled that people cannot even enjoy them.

You would dare compare \$2.4 billion a year for all of the pollution control in this country and one MX missile which costs \$3 billion. Try to explain that to the people of this country when we are talking about priorities and what is needed for the sustenance of the human beings of this Nation.

Mr. EDGAR. I would like to associate myself with the remarks of the gentleman from New Jersey [Mr. ROE].

Mr. Chairman, I think the issue is the question of what is needed. The gentleman and others have suggested that we have got fiscal constraints and the gentleman from Pennsylvania works very hard to focus attention on those fiscal constraints as they relate to infrastructure improvements, to water policy, trying to target the limited dollars that we have to the specific needs that we have in a variety of areas. I think this bill meets the test where it sets out for the next several years authorization levels to clean up our water. The question has been raised: Can we afford it? I think the question has to be raised: Can we afford not to have a commitment to cleaning those waters up in a positive way?

What we have tried to do is stay within categories of the budget. We held the line on the nonpoint source pollution provisions, we held the line on some other programs such as the acid rain issue that this gentleman from Pennsylvania would like to have seen expanded. But in no way do we think this bill has come to the floor trying to break the budget.

In fact, what we tried to do is lay out what the need is to move into the second phase of cleaning up the waters and streams of our Nation is a very fiscally conservative environmental environment.

Now I would like to say one other thing before I yield to the gentleman and that is that emotions are flying high on numbers. As I see the process, the budgetary process, the appropriations process and the authorizing process, it is our responsibility as an authorizing committee to lay out what the need is, to meet the needs of the society. The gentleman has an important disagreement with our numbers, but I think that fight is more appropriately made with the Budget Committee, with the Committee on Appropriations. And if they ask us to fall within particular number levels, we will set those priorities. We will work on those priorities.

The **CHAIRMAN.** The time of the gentleman from Pennsylvania [Mr. EDGAR] has expired.

(By unanimous consent, Mr. EDGAR was allowed to proceed for 2 additional minutes.)

Mr. **EDGAR.** If that pressure comes to us, as it has, we are fully capable of moving toward reductions and perhaps those reductions will come in other categories of our budget jurisdiction as opposed to the category that is so important to us, and that is cleaning up our waterways.

Mr. **TAUKE.** Mr. Chairman, will the gentleman yield?

Mr. **EDGAR.** I yield to the gentleman from Iowa [Mr. TAUKE].

Mr. **TAUKE.** Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I will not rehash our differences of viewpoint about philosophy and what authorization committees should do. But the question has arisen about the numbers and what authorization levels this bill provides for, for fiscal year 1986.

The gentleman from New Jersey indicated that it was substantially below $4.6 billion and suggested that it was, in fact, $3 billion.

Mr. Chairman, let me point out that in the committee report on page 55, the Congressional Budget Office cost estimate says that the estimated cost authorization level for this bill for fiscal year 1986 is $4.6 billion. That is the figure that I relied upon.

□ 1620

Mrs. **JOHNSON.** Will the gentleman yield?

Mr. **EDGAR.** I yield to the gentlewoman.

Mrs. **JOHNSON.** Mr. Chairman, I think this is a very important point, and I think this is where there is so much misunderstanding on the floor of the House now and in the preceding half an hour.

We do all have a responsibility to the deficit reduction effort that we must make; we are concerned with fiscal constraints within which we must operate, but it is important for the Members as they proceed toward this vote to understand exactly what spending this does commit us to.

There is a discrepancy between the CBO figure just quoted and the $3 billion amount that this commits us to in 1986. The source of the discrepancy is quite simple. It is that CBO includes in its 1986 budget estimate the cost of all special grants and projects as if they were being spent in 1986 when in reality all of those grants and projects will be spent over the 9-year life of the bill and we know from experience that some of those will not be spent at all.

(By unanimous consent, Mr. EDGAR was allowed to proceed for 1 additional minute.)

Mr. **EDGAR.** I yield to the gentlewoman.

Mrs. **JOHNSON.** What we are committed to spending in the next year, in 1986, is $3 billion. The committee arrived at that number by making cuts from last year's bill of $1 billion in the Sewer Construction Grants Program, reducing it from $3.4 billion to $2.4 billion, a level at which it has been now since 1981, and reducing the State revolving fund from $1.6 billion to $6 million, which brings us—because it is that fund that eventually is going to get the Federal Government out of this business altogether.

So, had we progressed toward that goal more rationally, we would more quickly achieve our deficit reduction goal.

Mr. **EDGAR.** I thank the gentlewoman for her comments.

Mr. **GALLO.** Mr. Chairman, I move to strike the last two words.

I yield to the gentlewoman from Connecticut.

Mrs. **JOHNSON.** I thank the gentleman for yielding.

Mr. Chairman, so what we have here really is a history of spending in this function of the budget that if you look back to 1981, involved the Congress, led by the Public Works Committee, more than having the program to achieve the goals of the Clean Water Act in this Nation in 1981.

Cutting that program by more than half, then level-funding that program every year until this year and now proposing an increase of about 20 to 25 percent.

Now that is what the Members must determine when they support this bill; whether we can make a small increase due to the enormity of the problem and the changes in that problem that have surfaced in recent years, whether we will deal with groundwater contamination which we see now contaminating major drinking water aquifers, whether we will begin to address nonpoint-source pollution, whether we will take some of the steps that indeed our future depends upon.

Do not mistake the lumping of the special grants funding, which will be spent out over 9 years for an 1986 expenditure even though CBO does make that misleading statement.

Mr. PURSELL. Will the gentleman yield?

Mr. GALLO. I yield to the gentleman.

Mr. PURSELL. I would like to comment with respect to the gentlewoman from Connecticut's analysis here. The House Budget Committee budget authority is $2.6 billion, period, in this program.

The House bill budget authority that is recommended by the committee is $4.6 billion. So it is obviously a $2 billion, pure and simple, increase in 1986 over 1985.

Now they have been using authorization figures, and they have been using budget outlay numbers, but we are trying to compare apples to apples. OMB and CBO agree on this issue; there is no disagreement between the Office of Management and Budget and the Congressional Budget Committee; and that in itself is unique.

So I suggest we had better be very careful here, but this bill is over the authorized level; it is over appropriation level for 1985, and that is where the amendment stands.

Mr. GALLO. Mr. Chairman, I understand where the gentleman is coming from as far as the amendment itself and the rationale in trying to react to the significant deficit we have, but I think there is more to this whole bill and this whole discussion that should take place.

I remember the commitments as a former local official. The commitments that were made by the Federal Government in dealing with our Clean Water Act as to the grant procedure and the amount of money that would be available to the municipalities.

That never came about. It started off very nicely, and then all of a sudden we lost a lot of that grant money, back to the point where it went to 50 percent.

So in a sense, in 1988 when this Clean Water Act becomes where municipalities have to come about and meet all the criteria, they are going to have a difficult time, and it is not going to be any better if in fact we do not recognize here in Congress the need for additional funds in an area not only to protect our water, but also the environment that surrounds the municipalities that we are so concerned about.

When we talk about the dollars, and I do not mean to minimize the significance of what the amendment says, but when we want to talk about the growth, the future growth of this country and what that means to us, means to the Federal Government in additional revenues, then I think you have to look beyond that investment that you are making today.

Frankly, I have 134 towns in the State of New Jersey right now that are on building ban, based on the fact that they have not been able to comply with the clean water standards because of lack of money—not because of lack of willingness; or the want to clean the environment—but because the dollars are not there.

I think it is short-sighted if in fact we go along with this amendment, because even with the amount of money we are talking about, as Chairman Roe has indicated and Chairman Howard, the amount that is needed is so tremendous for us to get moving, we have got to start someplace.

This is a 9-year commitment; one that is needed; it is needed by the States, it is needed by the municipalities, and I certainly support it and hope everyone else supports it.

Mr. CARPER. Mr. Chairman, I rise in support of the Penny-Pursell amendment this afternoon.

Mr. Chairman, this is a difficult step for me; it is difficult for several reasons. First of all, because of the great respect for which I hold the chairman of the subcommittee, Mr. Roe, my understanding of the deep feeling that he has for this issue.

It is also a difficult step for me because water pollution, in my State of Delaware, is a serious problem just as it is in the State of almost everyone who is represented here today.

We have sludge in the oceans off of the Atlantic shore; we have groundwater contamination, as many of you do in your districts; we have inland bays that have been polluted, and we have groundwater; we have lakes; we have streams that are polluted as well; not as badly as they used to be before we adopted the Clean Water Act, but they are still a serious concern.

I think the issue today is not whether or not we are committed to a clean environment; it is not whether or not we are committed to clean air and clean water and clean oceans.

As I have listened to this debate over the last hour, the people who have spoken for and against this amendment are people who for the most part

I think have some of the best environmental records in the House. These are people who are concerned about the environment.

The issue here today is not whether or not we have passed a budget resolution and how that budget resolution provides funding for this particular area; the issue today is not whether or not we should spend more money for cleaner water; I think all of us can easily agree we could easily spend a great deal more.

I think the basic question that we have to face today is whether we can afford to spend more money for literally anything—whether it is clean water, whether it is MX missiles, or whether it is programs for education, or you name it.

In a few minutes, I will be walking off of the House floor. I will be going off to speak and to meet with postal workers from my State. Those postal workers are going to be saying to me that they would like not less money next year; they would like more money from the Federal Government.

Last week I met with educators from my State; they did not ask for less money for education programs from the Federal Government; they wanted more.

I have met with senior citizens in the last week; they sought not less money for their programs, but more.

I have talked in the past week with military officials who wanted not less pay, not the same pay; they wanted more, and they wanted new aircraft, they wanted new ships; they wanted new chemical weapons.

Finally, I have talked with local officials in my State, and they do not want a freeze or a cut in revenue sharing, they would like more.

Let me go back to one comment that was made by an earlier speaker who said that if we want clean water, we can throw money at the problem; and in this case we actually do end up with cleaner water.

□ 1630

I suspect in this case that is probably true. The unfortunate thing is, Mr. Chairman, we do not have any more money to throw at this problem or any other problem. We do not have more money. That is a hard truth.

Again I want to commend the chairman of the subcommittee, I want to commend the committee. I know you have worked hard, you have endeavored to bring us a good bill, and I think you have. I must reluctantly support this amendment.

I yield to the gentleman from Minnesota [Mr. PENNY] for any comments he might have.

Mr. PENNY. I thank the gentleman for yielding.

I simply want to stress that this amendment could be called the truth-in-budgeting amendment. The budget resolution that we are attempting to abide by here in the House provides for a $2.6 billion funding level for this program in the coming year. That is going to bind the Appropriations Committee to spend only $2.6 billion on this program in the coming year, and we ought to be honest at the outset, upfront, with this authorization bill, and put in this bill that same $2.6 billion funding level. Let us freeze this budget, let us be consistent on the freeze resolution.

Mr. CHANDLER. Mr. Chairman, will the gentleman yield?

Mr. CARPER. I yield to the gentleman from Washington.

Mr. CHANDLER. I thank the gentleman for yielding, and I want to compliment him for his articulate comments.

Mr. Chairman, I represent the State of Washington. The chairman of the committee has been a real gentleman to me and to Members of our delegation in trying to help us. It is a sad day when we have to choose between priorities that we as Members look at and try to feel in our hearts which are the most important. I had to come down on the side of fiscal responsibility in this case. I look at the trade imbalance that is crippling our State, at the interest rates, at the value of the dollar, at the likelihood of the return of inflation if we do not get this fiscal situation under control. As high a priority as this is for people who live in the most beautiful part of the world, I have to say that we have simply got to freeze spending entirely. You all remember the impassioned plea that the gentleman from Florida [Mr. NELSON] made.

The CHAIRMAN. The time of the gentleman from Delaware [Mr. CARPER] has expired.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan [Mr. PURSELL].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. PURSELL. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 207, noes 219, not voting 7, as follows:

[Roll No. 249]

AYES—207

Andrews
Archer
Armey
AuCoin
Badham
Barnard
Bartlett
Barton
Bates
Bedell
Bereuter
Biaggi
Bilirakis
Bliley
Boner (TN)
Boulter
Broomfield
Brown (CO)
Broyhill
Bruce
Bryant
Burton (IN)
Byron
Callahan
Campbell
Carper
Carr
Chandler
Chappie
Cheney
Coats
Cobey
Coble
Coleman (MO)
Combest
Conte

Cooper
Craig
Crane
Dannemeyer
Darden
Daub
DeLay
DeWine
Dickinson
DioGuardi
Dorgan (ND)
Dornan (CA)
Dreier
Duncan
Durbin
Eckert (NY)
Edwards (OK)
Emerson
English
Erdreich
Evans (IA)
Fawell
Feighan
Fiedler
Fish
Fowler
Franklin
Frenzel
Frost
Gibbons
Gingrich
Glickman
Goodling
Gordon
Gradison
Gregg
Grotberg
Gunderson
Hall (OH)
Hansen
Hartnett
Hatcher
Heftel
Hendon
Henry
Hertel
Hiler
Hillis
Hopkins
Huckaby
Hutto
Hyde
Ireland
Jacobs
Jeffords
Jenkins
Jones (OK)
Kaptur
Kasich
Kemp
Kindness
Kolbe
Kramer
LaFalce
Lagomarsino
Latta
Leach (IA)
Leath (TX)
Levin (MI)
Lewis (FL)
Lightfoot
Livingston
Loeffler
Lott
Lujan
Lungren
Mack
MacKay
Marlenee
Martin (IL)
Martin (NY)
Mazzoli
McCain
McCandless
McCollum
McCurdy
McDade
McKernan
McKinney
McMillan
Meyers
Michel
Miller (OH)
Miller (WA)
Monson
Moore
Moorhead
Morrison (CT)
Morrison (WA)
Mrazek
Myers
Neal
Nichols
Nielson
O'Brien
Olin
Oxley
Parris
Penny
Pickle
Porter
Pursell
Ray
Regula
Ridge
Ritter
Roberts
Roemer
Roth
Rowland (CT)
Rudd
Schuette
Schulze
Schumer
Sensenbrenner
Sharp
Shaw
Shelby
Shumway
Sikorski
Siljander
Skeen
Slattery
Slaughter
Smith (FL)
Smith (NE)
Smith (NH)
Smith, Denny
Smith, Robert
Snowe
Spence
Spratt
Staggers
Stallings
Stenholm
Strang
Stump
Sweeney
Swindall
Tallon
Tauke
Tauzin
Thomas (CA)
Traxler
Vander Jagt
Volkmer
Vucanovich
Walgren
Walker
Weaver
Weber
Whitehurst
Whitley
Whittaker
Wolf
Wolpe
Wortley
Wyden
Wylie
Young (FL)
Zschau

NOES—219

Ackerman
Addabbo
Akaka
Alexander
Andrews
Annunzio
Anthony
Applegate
Aspin
Atkins
Barnes
Bateman
Beilenson
Bennett
Bentley
Berman
Bevill
Boehlert
Boggs
Boland
Bonior (MI)
Bonker
Borski
Bosco
Boucher
Boxer
Breaux
Brooks
Brown (CA)
Burton (CA)
Bustamante
Carney
Chappell
Clay
Clinger
Coelho
Coleman (TX)
Collins
Conyers
Coughlin
Courter
Coyne
Crockett
Daniel
Daschle
Davis
de la Garza
Dellums
Derrick
Dicks
Dingell
Dixon
Donnelly
Dowdy
Dwyer
Dymally
Dyson
Early
Eckart (OH)
Edgar
Edwards (CA)
Evans (IL)
Fascell
Fazio
Fields
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Fuqua
Gallo
Garcia
Gaydos
Gejdenson
Gekas
Gephardt
Gilman
Gonzalez
Gray (IL)
Gray (PA)
Green
Guarini
Hall, Ralph
Hamilton
Hammerschmidt
Hawkins
Hayes
Holt
Horton
Howard
Hoyer
Hughes
Hunter
Johnson
Jones (NC)
Jones (TN)
Kanjorski
Kastenmeier
Kennelly
Kildee
Kleczka
Kolter
Kostmayer
Lehman (CA)
Lehman (FL)
Leland
Lent
Levine (CA)
Lewis (CA)
Lipinski
Lloyd
Long
Lowery (CA)
Lowry (WA)
Luken
Lundine
Madigan
Manton
Markey
Matsui
Mavroules
McCloskey
McEwen
McGrath
McHugh
Mica
Mikulski
Miller (CA)
Mineta
Mitchell
Moakley
Molinari
Mollohan
Montgomery
Moody
Murphy
Murtha
Natcher
Nelson
Nowak
Oakar
Oberstar
Obey
Ortiz
Owens
Packard
Panetta
Pashayan
Pease
Pepper
Perkins
Petri
Price
Quillen
Rahall
Rangel
Reid
Richardson
Rinaldo
Robinson
Rodino
Roe
Rogers
Rose
Rostenkowski
Roukema
Rowland (GA)
Roybal
Russo
Sabo
Savage
Saxton
Schaefer
Scheuer
Schroeder
Seiberling
Shuster
Sisisky
Skelton
Smith (IA)
Smith (NJ)
Snyder
Solarz
Solomon
St Germain
Stangeland
Stark
Stokes
Stratton
Studds
Sundquist
Swift
Synar
Taylor
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Udall
Valentine
Vento
Visclosky
Watkins
Waxman
Weiss
Wheat
Whitten
Williams
Wilson
Wirth
Wise
Yates
Yatron
Young (AK)
Young (MO)

NOT VOTING—7

Downey
Hefner
Hubbard
Lantos
Martinez
Schneider
Wright

☐ 1650

The Clerk announced the following pair:

On this vote:

Mrs. Schneider for, with Mr. Lantos against.

Messrs. DAVIS, ROSE, SAXTON, GRAY of Pennsylvania, HORTON, GILMAN, and HUNTER changed their votes from "aye" to "no."

Messrs. WYDEN, BRYANT, and HERTEL of Michigan changed their votes from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. OBERSTAR

Mr. OBERSTAR. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. OBERSTAR: Page 86, after line 25, insert the following:

SEC. 48. DEMONSTRATION PROGRAM ON ACIDIFIED LAKES.

(a) RESTORATION OF BIOLOGICAL INTEGRITY.—The Administrator, in conjunction with the United States Fish and Wildlife Service and the environmental agencies of the States, shall carry out a demonstration program to restore the biological integrity of acidified lakes and watersheds through liming. The Administrator, in coordination with the environmental agencies of the States, shall select sites to carry out such program which will enable the Administrator to demonstrate and determine the effectiveness of liming in reducing the acidity of lakes and watersheds and in restoring the biological integrity of acidified lakes and watersheds.

(b) Report.—Not later than 90 days after completion of the demonstration program and not later than three and six years after completion of the program, the Administrator shall submit to the appropriate Committees of Congress reports on the results of the demonstration program carried out under this section. Such reports shall include, but not be limited to, an analysis of the effectiveness of liming in reducing the acidity of lakes and watersheds and in restoring the biological integrity of acidified lakes and watersheds in the long-term and the short-term.

(c) Authorization of Appropriations.—There is authorized to be appropriated to carry out this section not to exceed $10,000,000 for fiscal years beginning after September 30, 1985, to remain available until expended.

Mr. OBERSTAR (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. OBERSTAR. Mr. Chairman, the amendment would establish a demonstration program to be administered by the Environmental Protection Agency on the feasibility of cleaning up lakes that have been damaged by acid rain.

Acidified lakes, particularly those in the northern tier area that are highly vulnerable to acid depositions, the so-called glaciated lakes, are among those that are the most sensitive in the Nation's inventory of lakes that have been very severely affected by acid deposition.

This program would allow the Environmental Protection Agency for a period of time to demonstrate techniques for the cleanup of such lakes and see whether it is possible to restore them to their prior state of cleanliness.

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. OBERSTAR. I would be glad to yield to the gentleman from New Jersey.

Mr. ROE. I thank the gentleman for yielding.

Mr. Chairman, the committee on this side has reviewed the gentleman's very good amendment. We have no objection and we think it is an addition to the bill and we accept the amendment.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. OBERSTAR. I yield to the ranking minority member, the gentleman from Kentucky.

Mr. SNYDER. I thank the gentleman for yielding.

Mr. Chairman, we are prepared to accept the amendment on this side.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota [Mr. Oberstar].

The amendment was agreed to.

Amendment Offered by Mr. Oberstar

Mr. OBERSTAR. Mr. Chairman, I offer another amendment.

The Clerk read as follows:

Amendment offered by Mr. Oberstar: Page 71, after line 3, insert the following:

"(e) Acidity Mitigation Program.—

"(1) State surveys and plans.—Any State may prepare, and submit to the Administrator for his approval—

"(A) a survey of surface waters in such State in which water quality has deteriorated as a result of high acidity that may reasonably be due to acid deposition or acid mine drainage, and

"(B) methods and procedures that may be applied to mitigate the harmful effects of such acidity on such waters.

"(2) Description of certain eligible methods.—Methods which the Secretary may approve under this subsection may include, but are not limited to—

"(A) innovative methods of neutralizing and restoring buffering capacity of surface water, such as through the use of alkaline substances, that have become so acidic as to endanger game fish species, and

"(B) methods of removing from surface water toxic metals and other toxic substances mobilized by high acidity.

"(3) Grants.—The Administrator, in consultation with the Secretary of the Interior, shall make grants to States to carry out methods and procedures approved by the Administrator under this subsection.

"(4) Federal share.—The amount granted under this subsection to any State for any fiscal year shall not exceed 80 percent of the funds expended by such State in such year for carrying out approved methods and procedures under this subsection.

"(5) Distribution of funds.—The Administrator shall provide for an equitable distribution of sums appropriated under this subsection among States with approved methods and procedures. Such distribution shall be based on the relative need of each such State for the mitigation of the harmful effects on surface waters of high acidity that may reasonably be due to acid deposition or acid mine drainage. The amount of any grant to a State under this subsection shall be in addition to, and not in lieu of, any other Federal financial assistance.

"(6) Monitoring and annual reports.—The Administrator and the Secretary of the Interior shall monitor and assess the effectiveness of the methods and procedures utilized by the States under this subsection and shall submit a report on such monitoring and assessment annually to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

"(7) Authorization of appropriations.—There is authorized to be appropriated to carry out this subsection $25,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990. Amounts appropriated under this subsection shall remain available until expended.".

Page 71, line 4, strike out "(e)" and insert in lieu thereof "(f)".

Page 74, line 13, strike out "and (d)" and insert in lieu thereof ", (d), and (e)".

Page 74, line 14, after "Act" insert "and under section 36 of this Act, relating to maintenance of water quality in estuaries,".

Mr. OBERSTAR (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

Mr. CHAIRMAN. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. OBERSTAR. Mr. Chairman, this amendment is in concert with the previous amendment just adopted by the Committee. It would provide funding to States to establish surveys of their intrastate waters, surface waters, within their State to determine their condition of acidity, whether due to acid deposition of mine drainage to enable such States to set up programs for acid rain cleanup.

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. OBERSTAR. I yield to the chairman of the subcommittee, the gentleman from New Jersey.

Mr. ROE. I thank the gentleman for yielding.

Mr. Chairman, this is a very fine amendment and it is really a technical amendment and we appreciate it. We accept the amendment.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. OBERSTAR. I yield to the gentleman from Kentucky.

Mr. SNYDER. I thank the gentleman for yielding.

Mr. Chairman, we accept the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota [Mr. OBERSTAR].

The amendment was agreed to.

□ 1700

Mr. SOLOMON. Mr. Chairman, I move to strike the last word.

Mr. Chairman, earlier this afternoon the Committee of the Whole passed a committee amendment establishing a badly needed grants program to provide for the first time aid to localities where ground water supplies have been polluted. The same amendment was added to the Clean Water Act amendments in the House bill last year, but it was never passed, as we all know.

One of the most seriously affected municipality in the country was, and still is, the town of Moreau in a rural area of New York State. This was one of the top priorities of need communities, according to the debate last year. At this point, Mr. Chairman, I would like to ask the chairman of the subcommittee, the gentleman from New Jersey [Mr. ROE], if he would engage in a brief colloquy.

Mr. ROE. Yes, of course, if the gentleman will yield.

Mr. SOLOMON. Mr. Chairman, am I correct in my understanding that, as our discussion last year showed, a new water district for the town of Moreau is considered a top priority of the committee and would be eligible for full funding of up to $2 million under the terms of the Johnson legislation, as incorporated in your amendment this year?

Mr. ROE. Mr. Chairman, if the gentleman will yield, I think the gentleman has exactly articulated the entire issue involved. There is no question that under the Johnson language in the legislation the town of Moreau should receive top priority.

Mr. SOLOMON. Mr. Chairman, I thank the gentleman, and again I would like to commend the gentlewoman from Connecticut [Mrs. JOHNSON] and the other members of the committee for developing this workable approach to the problem of ground water contamination, and on behalf of all the people in this country I want to commend Chairman ROE for the outstanding job he has done on this subcommittee.

AMENDMENT OFFERED BY MR. MOODY

Mr. MOODY. Mr. Chairman, I offer an amendment, and I ask unamimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The text of the amendment is as follows:

Amendment offered by Mr. MOODY: In the matter inserted on page 80 after line 14 by Mr. Howard's amendment, insert at the end of subparagraph (B) the following:

A permit issued under this section may cover one or more than one municipal separate storm sewer.

Mr. MOODY. Mr. Chairman, this is a brief technical amendment to make clear the intent of a section of the Howard amendments to the committee amendment that were adopted earlier regarding the nonexemption of urban areas from requiring a permit for stormwater overflow.

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. MOODY. I yield to the subcommittee chairman.

Mr. ROE. Mr. Chairman, we have reviewed this amendment. It is really a clarifying and an important amendment. We are prepared to accept the amendment on this side.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. MOODY. I yield to the gentleman from Kentucky.

Mr. SNYDER. Mr. Chairman, we are prepared to accept the amendment on this side.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Wisconsin [Mr. MOODY].

The amendment was agreed to.

Mr. Young of Missouri. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I will ask the gentleman from New Jersey [Mr. Roe], the subcommittee chairman, if he will engage in a colloquy.

Mr. ROE. I will, of course, Mr. Chairman, if the gentleman will yield.

Mr. YOUNG of Missouri. Mr. Chairman, it has been brought to my attention that EPA is contemplating a policy that would deny Federal grant funds to local treatment projects that will not be completed by the July 1, 1988 secondary treatment deadline. Apparently, this unwritten interpretation is based on the national municipal policy adopted in 1984 by EPA. Mr. Chairman, what concerns me is that we have numerous local agencies that have been working diligently and against substantial financial and other limitations to comply with the 1988 secondary deadline. Mr. Chairman, as you know, there are numerous projects now under construction to comply with this deadline. We also know that while some of these projects may not meet the July 1, 1988 deadline, an EPA policy as I described will gurantee that these projects will not meet the deadline.

Mr. Chairman, does the intent of Congress on this legislation support such a policy by EPA.

Mr. ROE. No, it is absolutely converse to the policy.

Mr. YOUNG of Missouri. Mr. Chairman, furthermore, it seems the whole intent of this legislation before us today, as well as the Senate bill now pending before this Chamber, recognizes that despite the best efforts of many agencies, completion of some projects will occur after the deadline. I cannot believe that the intent of Congress could be interpreted to support a policy to fund only those projects that would be completed by the July 1, 1988 deadline and then deny funds to a project slated for completion for August 1, 1988. Such a policy, it seems, negates the efforts of the Congress in developing legislation to assist communities in coming into compliance with this Federal requirement before and after the July 1, 1988 deadline.

Mr. Chairman, do you feel that additional statutory direction is necessary to guarantee that this policy will not be implemented.

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. YOUNG of Missouri. I yield to the subcommittee chairman.

Mr. ROE. No; I think, as the gentleman has pointed out, that the provisions of our bill provide that sufficient funding will be available to complete more projects than originally contemplated by the administration.

Mr. YOUNG of Missouri. Mr. Chairman, I thank the gentleman. I am pleased to know that our agencies can continue to expect Federal assistance in meeting these deadlines.

Mr. Chairman, I yield back the balance of my time.

Mrs. JOHNSON. Mr. Chairman, I move to strike the last word.

(Mrs. JOHNSON asked and was given permission to revise and extend her remarks.)

Mrs. JOHNSON. Mr. Chairman, I rise in very strong support of the passage of H.R. 8, and I want to take this opportunity to commend the chairman of the subcommittee, the gentleman from New Jersey [Mr. Roe], the chairman of the committee, the gentleman from New Jersey [Mr. Howard], and the ranking members, the gentleman from Kentucky [Mr. Snyder] and the gentleman from Minnesota [Mr. Stangeland]. These gentlemen have together worked to craft for us a superior piece of legislation.

This is not merely a reauthorization of legislation that has gone far to clean the rivers and sources of water in America but is a refinement of that legislation. It represents the best in the legislative tradition of oversight, and it improves as well the ability of States to utilize their resources to implement more economically the requirements of this important legislation.

I also want to point out that it has in it three portions that are of particular importance to the Northeast area that I represent. I do want to call to the Members' attention that the combined sewer overflow program, which in the past was not eligible for ordinary sewer grant funds except on a limited basis, will, as a result of this thoughtful and thorough piece of legislation, be eligible for any amount of funding the State desires to make available to it. That is extremely important, especially to the older cities of America.

It also addresses the crying need for prevention of non-point-source pollution and for addressing the serious problem of ground water contamination.

Mr. Chairman, I merely want to commend the chairman of the committee and the chairman of the subcommittee for their thoughtful and able leadership, and I join them in supporting this reauthorization.

Mr. ROE. Mr. Chairman, will the gentlewoman yield?

Mrs. JOHNSON. I yield to the chairman of the subcommittee.

Mr. ROE. Mr. Chairman, we express to the gentlewoman our great appreciation for the superb job she has done and for having contributed to the legislation. It would not have been possible without her.

Mrs. JOHNSON. Mr. Chairman, I thank the gentleman.

AMENDMENT OFFERED BY MR. BREAUX

Mr. BREAUX. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BREAUX: On page 80, strike out lines 7 through 14 and insert in lieu thereof the following:

"ing precipitation runoff and which do not come into contact with any overburden, raw material, intermediate product, finished product, by-product, or waste product located on the site of such operations. Any person discharging stormwater runoff not described in the preceding sentence from mining operations or oil or gas exploration, production, processing, or treatment operations or transmission facilities shall monitor the quality of water in such flows and shall report not less often than annually to the Administrator, or at such intervals as the Administrator or the State deems appropriate.".

Mr. BREAUX (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

(Mr. BREAUX asked and was given permission to revise and extend his remarks.)

Mr. BREAUX. Mr. Chairman, I would say to the members of the committee that the amendment I am offering goes to a section of the bill, section 26, which sets up a procedure for various exemptions from the permitting of certain storm-water runoff. What we are dealing with, for instance, is rain water that runs across a field.

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. BREAUX. I am glad to yield to my subcommittee chairman.

Mr. ROE. Mr. Chairman, we have looked at this amendment. We feel the amendment is reasonable, and we have no objection to it on this side.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. BREAUX. I am glad to yield to the gentleman from Kentucky.

Mr. SNYDER. Mr. Chairman, I want to say that this is a good amendment, and we are pleased to accept it.

Mr. BREAUX. Mr. Chairman, I am prepared to provide a further explanation of the amendment, but now, with the assurance of the chairman of the subcommittee and the ranking minority member, I ask for an aye vote on my amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Louisiana [Mr. BREAUX].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. CRAIG

Mr. CRAIG. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. CRAIG: Page 56, line 10, before "Section" insert: "(a) IN GENERAL.—".

Page 57, after line 4, insert the following:

(b) SENSE OF CONGRESS.—It is the sense of Congress that the Administration and the States, in developing, publishing, and revising water quality criteria under section 304(a)(1) of the Federal Water Pollution Control Act should—

(1) consider the economic effects of implementation of the proposed water quality criteria;

(2) consider cyclical changes in the climate and environment; and

(3) take into account the recommendations of the concerned States and the findings and results of site specific and areawide research, tests, experiments, and demonstration programs conducted by the concerned States.

Mr. CRAIG (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Idaho?

There was no objection.

Mr. CRAIG. Mr. Chairman, in 1981, in concurrence with the Idaho Health and Welfare Department, the State legislature acted to modify proposed State water quality standards below hydroelectric facilities to establish a dissolved oxygen standard of 5 milligrams/litre (m/l) average during a 4-hour period between the months of May and October and a 6 m/l average during the remaining months. EPA later disapproved these standards siting that they would not adequately protect salmonid spawning and the other life processes of these fish. Earlier this year, the EPA argued that the dissolved oxygen standard should be 6.5 m/l on a 30-day average, 5 m/l for a 7-day average, and a minimum of 4 m/l during nonspawning periods.

If the EPA's proposed standard was adopted, dams in Idaho would be forced to install monitoring devices and other expensive equipment to increase the level of oxygen in water below the dams. The issue to be addressed here is the legitimacy of EPA's claim that their standards are necessary. The EPA has testified before the Idaho Legislature that it cannot identify any areas of adverse impact to fisheries or aquatic life but all the same, they feel we should modify our standards in order to meet these arbitrary levels.

If the EPA and Idaho can't reach an agreement regarding the disputed standards, the EPA will promulgate its own and enforce them. If the State refuses to follow the EPA's standards, we would lose Federal funds for construction of city wastewater treatment plants.

In closing, Mr. Chairman, my amendment is a sense of the Congress that the Administrator and the States in developing, publishing, and revising water quality criteria under section 304(a)(1) of the Federal Water Pollution Control Act should consider the economic impact of their decisions on the impacted States.

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. CRAIG. I yield to the subcommittee chairman.

Mr. ROE. Mr. Chairman, again this is a splendid amendment. This side has no objection to it. It is a fine contribution to our effort.

Mr. SYNDER. Mr. Chairman, will the gentleman yield?

Mr. CRAIG. I yield to the gentleman from Kentucky.

Mr. SYNDER. We are pleased to accept the amendment, Mr. Chairman.

Mr. CRAIG. Mr. Chairman, I appreciate the support of the chairman and the ranking minority member of the subcommittee, and I thank them for their acceptance of this amendment. I urge its passage.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Idaho [Mr. CRAIG].

The amendment was agreed to.

□ 1710

AMENDMENT OFFERED BY MR. STUDDS

Mr. STUDDS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. STUDDS: The Committee substitute is amended by adding at the end thereof the following new section:

"SEC. . RIGHT AND LIABILITIES UNDER OTHER FEDERAL LAW.

Section 505 of the Federal Water Pollution Control Act is amended by inserting the following new subsection (f) and by designating the succeeding subsections accordingly:

'(f) Nothing in this Act shall affect or modify the rights or liabilities of any person under other Federal law with respect to damages caused by noncompliance with any requirement of this Act or any permit issued under this Act.' "

Mr. STUDDS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

(Mr. STUDDS asked and was given permission to revise and extend his remarks.)

Mr. STUDDS. Mr. Chairman, this amendment provides simply that nothing in the Federal Water Pollution Control Act shall affect or modify the rights or liabilities of any person under other Federal law with respect to damages caused by noncompliance with any requirement of this act or any permit issued under this act.

Since circulating the amendment for comment, I have been asked by several Members, why is this amendment necessary? Isn't it obvious that fishermen and beach-front property owners should have the right to sue for damages suffered as a result of illegally caused pollution? Has not this right always been available?

The answer to both of these questions is yes, but the fact is that this amendment is necessary because the right of persons to sue under Federal law for economic loss suffered as a result of maritime pollution damage does not now exist; it has been taken away by recent court decisions that concluded that Congress, through enactment of the Federal Water Pollution Act, preempted Federal common and maritime tort law in the field of pollution.

What do these court decisions mean? They mean that if an oil tanker were to discharge its cargo off the coast of California, or Florida, or Long Island, or Cape Cod and in so doing, cause damage to private property, and loss of income to the operators of tourist hotels, those suffering economic loss as a result would have no means—I repeat no means—of seeking compensation for their loss under Federal law.

The court decisions mean that if an ocean incineration vessel, carrying huge quantities of toxic waste were to stop above a shellfish bed, and the operator of that vessel were to intentionally discharge the entire cargo of the vessel into the waters above that shellfish bed, the Government could sue for the costs of cleaning up that spill; the Government could seek to recover for the damage to natural resources; but the fishermen whose livelihoods may have depended for generations on the health of that shellfish bed would be out of luck; they would have no recourse under Federal law.

My amendment would merely restore a right that has existed, in one form or another, from the beginning of our country. It would not create any new rights; it would permit suits only in cases involving a violation of the law; and its scope is limited strictly to the question of damages. The amendment would not overturn the Supreme Court's decision in the so-called Milwaukee II case insofar as that decision relates to the authority of Federal courts to fashion abatement and control remedies that exceed the requirements of discharge permits issued under the FWPCA.

The case for the amendments is bolstered by a brief filed by the Department of Justice in one of the court cases that prompted me to offer this amendment. In that brief, which was filed last year, the Justice Department stated that:

> A ruling that maritime tort claims were precluded by the FWPCA would adversely affect the United States as a shoreside and marine property owner, and as a custodian of natural resources.
>
> The * * * conclusion that maritime tort remedies are preempted by the * * * FWPCA is plainly wrong. The language, legislative history, and overall statutory scheme * * * reveals no Congressional intention to displace traditionally available maritime tort remedies for pollution caused property damage. To the contrary, there is ample evidence in the language and legislative history of the FWPCA that such remedies are specifically preserved * * * the FWPCA was neither designed nor intended to provide relief for pollution-caused property damage. Thus, it does not preempt the remedies traditionally available for such damage under the maritime law.

That is what the Department of Justice argued last year. The arguments it made were logical; they were presented for the purpose of protecting the interests of the United States; and they reflected an informed judgement about the history and scope of the Federal Water Pollution Control Act. But the courts did not agree with the Department of Justice.

The courts argued that the Congress, and more particularly the House Committee on Public Works and Transportation, which has taken the lead in passing environmental legislation for the past 15 years in this Congress, intentionally sought to deprive private citizens of the right to sue under Federal law for economic loss suffered as the result of maritime pollution. The courts argued that Congress and the Public Works Committee did this despite the fact that there is no reference in the committee report that accompanied this law when it was first enacted to the effect that this was the intent of the committee; there was no indication during debate on the floor that this was the intent of the House when it approved this legislation; there was no reference in the conference report that it was the intent of Congress to deprive citizens of this right; there is, in fact, no reference anywhere in the legislative history of this statute to indicate that any Member of Congress who voted for this bill intended at any point to eliminate the right of persons who suffer damage from illegally caused pollution to seek recovery for that loss.

The issue raised by this amendment is simple.

The courts have said that this Congress intended to take away from private citizens a right that they have enjoyed for decades. It is a limited right—the right to seek compensation under admiralty law or, where appropriate, some other Federal law, for economic loss suffered as the result of pollution. The courts, in this instance, are wrong. Congress never intended to deprive citizens of this right. But saying that the courts were wrong will not change the effect of their decisions. We can only do that by adding to the law the one simple sentence proposed by this amendment; it will clarify the intent of the Congress; it will state that Congress does believe people who are hurt by those committing illegal acts should be accorded the right to their day in court.

. This amendment would not, I repeat, create any new rights. It will not lead us into a position of legal uncertainty about what protection the law does or does not provide. The right it seeks to restore is a traditional right; a right that has existed since the founding of the Republic; and a right that the very simplest principles of justice demand we restore. I believe that this amendment will strengthen the legislation we are considering today by restoring a measure of lost integrity to the landmark legislation this bill seeks to amend; the Federal Water Pollution Control Act is one of the most important pieces of environmental legislation in the history of our country. It is a law that was developed and enacted to protect our people from the effects of unregulated pollution; the courts have argued the contrary, that this is a law that deprives citizens of their right to seek compensation when injured by pollution. My amendment says the courts are wrong, and that those who have, like myself, pointed with pride and respect to the FWPCA for years, are correct; this is a law that protects the rights of our people; not a law that takes those rights away.

Mr. Chairman, because of lingering concerns on the part of member of the committee, I am willing, in deference to the committee to accept a change in the amendment changing the word "law" to "statutes."

In so doing, I stand by my statement; I think we can and should fully restore the rights of those who suffer damage as a result of illegal pollution.

With this change, we go part of the way, but it is an important step in that direction; and I hope that as consideration of this bill proceeds to conference, a consensus in support of more comprehensive language can be developed.

Mr. Chairman, I understand there are some concerns both by the majority and the minority sides of the Committee with respect to the amendment as originally drafted and printed in the RECORD and introduced.

In order to accommodate those concerns and in accordance with the agreement reached between both the minority and the majority sides, I ask unanimous consent, Mr. Chairman, that my amendment be modified by inserting the word "STATUTES" in lieu of the word "LAW."

The CHAIRMAN. Is there objection to the request of the gentleman from

Massachusetts [Mr. Studds]?

There was no objection.

The text of the amendment, as modified, is as follows:

Amendment offered by Mr. Studds, as modified: The Committee substitute is amended by adding at the end thereof the following new section:

"SEC. . RIGHTS AND LIABILITIES UNDER OTHER FEDERAL STATUTES.

Section 505 of the Federal Water Pollution Control Act is amended by inserting the following new subsection (f) and by designating the succeeding subsections accordingly:

'(f) Nothing in this Act shall affect or modify the rights or liabilities of any person under other Federal law with respect to damages caused by noncompliance with any requirement of this Act or any permit issued under this Act.' "

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. STUDDS. I yield to the gentleman from New Jersey.

Mr. ROE. Mr. Chairman, I thank the gentleman for yielding.

Both sides have really debated and discussed this amendment and with the revision that the gentleman from Massachusetts [Mr. Studds] is making in his text, we have no objection on this side.

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. STUDDS. I yield to the gentleman from Kentucky.

Mr. SNYDER. Mr. Chairman, I thank the gentleman for yielding. I understand the gentleman has some concerns about both admiralty law and common law, and the gentleman has accommodated us by not putting that in there.

I think we might well want to take a look at that in the future.

Mr. Chairman, we are pleased to accept the amendment on this side.

Mr. STUDDS. Mr. Chairman, I thank both gentlemen for their cooperation.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Massachusetts [Mr. Studds], as modified.

The amendment, as modified, was agreed to.

Mr. OBERSTAR. Mr. Chairman, I move to strike the last word.

(Mr. OBERSTAR asked and was given permission to revise and extend his remarks.)

Mr. OBERSTAR. Mr. Chairman, as the chairman of our subcommittee knows, one of my concerns throughout the process of consideration of this legislation has been the prospect that some States and some industries may be allowed to slide back in their commitment to clean water. We have discussed this extensively in the subcommittee and again in the full committee and privately and with many Members.

I really do want to express my deep appreciation to the chairman of the subcommittee, the gentleman from New Jersey [Mr. Roe], for the enormous amount of time and attention the gentleman has given to this issue.

With respect to the language that is now included in the bill, which is very carefully and skillfully crafted and does address the issue of my concern, the 2½-year period during which prohibition against backsliding would be in effect, how does the chairman intend that this matter should be handled by the regulatory agency after the 2½-year period?

Mr. ROE. Well, Mr. Chairman, if the gentleman will yield, we require a report from EPA 2 years after enactment. That is the final report with recommendations, which will give us 6 months in which to take action. With the decision of Congress on this issue, I would expect the EPA to continue the policy continued in our provision until legislative action needed is taken. In other words, we intend to see that this matter is dealt with directly.

Mr. OBERSTAR. Mr. Chairman, I thank the gentleman for that response. I concur in that approach and insist that it should be carried out that way by the Agency.

Second, with respect to section (F)(2)(b) of the bill, does the chairman understand that the language "information available which was not available at the time of permanent issuance" to include waste load reallocations which might occur, for example, when one plant on a stream segment would close?

I think the issue of reallocation is an extremely important matter that might prevent progress toward clean water if waste loads are reallocated only to existing industries. If that should occur, economic expansion could be choked off and then the worst situation is that waste load allocations would acquire an economic value in and of themselves.

Does the gentleman understand that waste load allocations could be treated among companies under the gentleman's language?

Mr. ROE. Well, if the gentleman will yield, our intent is that the water quality standards have to be met. Our intent is that any new industry that would locate on a stream would have to locate and put the equipment in whatever the level of treatment had been determined, BAT or higher, so we do not see the point of one competing with the other.

Mr. OBERSTAR. The language is not intended, not should it on its face ascribe any economic value to waste load allocations?

Mr. ROE. That is correct.

Mr. OBERSTAR. Finally, Mr. Chairman, I just want to say I rise in very strong support of H.R. 8, the Water

Quality Renewal Act of 1985. I want to offer just enormous compliments and congratulations to the gentleman from New Jersey [Mr. Roe] who has spent hundreds of hours on this legislation, devoted weekends, exhausted the staff and other members and himself in the process and he still stands tall in this body with the enormous amount of work that has been done and contributed to one of the most complicated pieces of legislation in the clean water field that we have had, including in those remarks, I say, the Clean Water Act of 1972.

It is a very strong environmental bill. It provides program funding and, more important, it provides continuity for the construction grants program. Its clean lakes provisions, its attention to problems and programs unique to the Great Lakes, its antitoxics stance, and its estuaries and bays provisions are much needed and greatly appreciated.

I am particularly pleased with the antibacksliding language in the committee amendment, and am most grateful to the gentleman from New Jersey [Mr. Roe] for his personal attention to this issue, which has been my chief concern. I do have two questions, which I will raise with the gentleman, but overall I believe the amendment addresses my concerns, and will give it my full support. My philosophy is, if the water is clean, keep it clean. This amendment will help accomplish that goal.

I am also grateful to our committee leadership for including in this bill, as they did in last year's version, my Nonpoint Source Control Act to control runoff and improve water quality in urban and rural areas.

Section 7 of H.R. 8 adds a new section 319 which establishes a voluntary program to encourage States to develop and implement control programs for nonpoint sources of pollution. This is to be an implementation program, not a planning program, using existing data where applicable, and building on programs, best management practices [BMP's] and other measures where they are already being implemented. No new planning funds are provided.

The intent of this program is not only to reduce nonpoint sources of pollution, but to improve water quality.

While this first phase of the program is voluntary in nature, section 319 does not preclude regulatory programs at the State level. Many States already have such programs for certain categories of sources, and enforcement is included as an eligible implementation activity. However, I am convinced that, during these first 4 years, the decision to implement a regulatory program should be made at the State rather than at the Federal level.

Each State is required, first, to submit to EPA a report which identifies streams not meeting applicable water quality standards or the goals and requirements of the act because of nonpoint sources; which identifies categories, such as agricultural, silvicultural, urban, construction and mining, and their subcategories, of nonpoint sources; identifies existing State and local nonpoint source control programs; and describes the process for identifying best management practices and other control measures. This information is to be based on existing data where available and adequate, including that collected under other provisions of the act, and approved under section 208 or 303 of the act.

Each State is also required to submit to EPA a plan which the State intends to implement over the next 4 years. This plan must specify those significantly affected streams which the State will address; the order and schedule for implementation; the categories and subcategories of sources to be included in the implementation plan; the best management practices and other measures to be used; other methods including but not limited to demonstration programs, enforcement, technical assistance, education, training, and cost sharing; sources of funding other than this program; and the estimated cost of the total implementation program.

The purpose of the plan is to inform the administrator precisely what the State intends to implement, when, and where. States need not address all their significantly impacted waters during these first 4 years. Rather, they should concentrate on those for which they have the resources to achieve real gains in pollution control and water quality improvement. However, initial implementation must concentrate on the most serious problem waters.

Section 319 does not set fixed implementation dates; the State is the proper entity to determine which dates it believes it can attain. However, the schedule must establish an expeditious time period for implementation of BMP's and other measures for each category and subcategory, and must indicate the estimated dates by which these practices and measures will be implemented. Expedition is the condition for initial approval of the plan, and the State's progress in attaining those goals is a condition of continued funding. The State must submit an annual report describing its activities and progress made in meeting its schedule during the preceding year. No grant for the coming fiscal year may be made unless the administrator determines the State's progress has been satisfactory during the past year.

To ensure that the State has addressed the major sources of nonpoint pollution, the plan should indicate to the administrator the relative contributions of each category and subcategory to the overall nonpoint source problem.

The State need not include in its plan all the methods listed in the bill, but implementation of BMP's is required.

Cost sharing is a necessary tool to encourage implementation of BMP's. However, the limited resources authorized in the bill preclude widespread use of cost sharing. This should thus be used very sparingly, and only when absolutely necessary to assure critically needed compliance where these costs would otherwise be beyond the individual farmer's means. Demonstration programs and other methods with wider application should be the predominant choices by the States.

To the maximum extent practicable, plans should be developed and implemented on a watershed-by-watershed basis.

In the development and implementation of their plans, States should, to the maximum extent practicable, utilize local agencies and organizations with expertise in nonpoint source controls, such as conservation districts, watershed districts, and public comprehensive planning organizations.

Because of the short timeframe between enactment of this bill and the final report to be issued by EPA in 1989 States are required to submit both the report and the plan within 270 days of enactment. However, we don't want to close the door on States which may not be able to complete the requirements within the first 9 months. Therefore, States may request, and EPA must grant, an extension of up to 9 additional months to permit as many States as possible to participate in the program.

EPA is to examine the State's plan against the data submitted under the report and against the goals and requirements of the act. EPA must make a final decision on the plan and report within 6 months, or the plan is automatically approved. EPA may disapprove the plan or portion of it if it is unlikely to satisfy the goals and requirements of the act; if the State's authority or resources are not adequate; if the implementation schedule is not sufficiently expeditious; or if the plan is not adequate to improve water quality or reduce nonpoint source pollution.

All States are required to participate. However, if a State does not choose to do so, or if its plan is not approved, the bill provides that EPA develop the information required in the report for waters not meeting water quality standards or the goals and requirements of the act, and categories and subcategories of sources in order to assure a nationally consistent data base. There is no implementation provision in the report.

In order to achieve the maximum implementation nationwide, section 319 provides that, if a State does not participate, or if its plan is not approved, a local public agency or organization may, with the approval of its State, develop and implement a plan for its area. Such a local organization must have expertise in, and authority to, control nonpoint source pollution in its area, and must be of sufficient geographic size to implement an effecitve program. It may request technical assistance from EPA in developing its plan, and if the plan is approved the local organization may receive funding and implement its plan in the same manner as if it were a State.

There is some concern that other Federal and State programs and activities may at times work at cross purposes with the State's efforts to control nonpoint source pollution. Accordingly, the States are to identify Federal and State programs which are inconsistent with their plans, and recommend changes which could be made to make them consistent, and assist with implementation. EPA is to consolidate the State's recommendations, and forward them to the appropriate agencies. Each agency must then consider these recommendations and, to the maximum extent practicable and consistent with existing law, accommodate those recommendations and carry out its own programs and activities in a way which will be consistent with, and assist implementation of, the plans.

Section 319 provides further incentives to consistency by referencing this section in section 304(k) of the act, which authorizes EPA to enter into agreements with other Federal agencies to provide for the maximum utilization of other Federal laws and programs in controlling nonpoint sources of pollution. I encourage EPA to reach agreements with all appropriate agencies, but especially the Department of Agriculture, and the Office of Surface Mining, Reclamation and Enforcement in the Department of Interior.

Section 319 establishes a mechanism for reconciling pollution of one State's waters by another State. At the request of a downstream State with an approved plan, or at the initiation of EPA, an interstate management conference of all States contributing nonpoint source pollution to the water body shall be convened, in a case where the water body is not meeting water quality standards or the goals and requirements of the act. Upstream States would be required either to implement or to revise their plans to address the interstate water body, but the choice of BMP's and other implementing measures is to be made by each individual State. There is no provision in the bill for another State or the conference to impose specific measures on any State. Each State must implement its revised plan.

Management conferences or compacts already exist for many interstate water bodies. Where appropriate, EPA should consider using these existing bodies for this purpose as well.

Section 319 authorizes $150 million per year through 1990 and provides for up to a 50 percent Federal match for costs incurred by the States. However, the Federal share could rise to 60 percent where the administrator determines that a significant number of non-Federal, non-State interests in a watershed area agree to participate. The administrator is provided the flexibility to determine when a significant number of participants has joined the program.

The application should contain, in detail specific to each watershed, information similar to that required for the plan: that is, it should provide, at the project level, for the year for which the funds are requested, an identification of the stream segments to be addressed, the specific pollutants involved, and the sources of pollution. It should lay out the strategy for controlling these sources, including BMP's and other measures, together with a schedule of activities to be undertaken, and a discussion of other activities of Federal and State agencies cooperating in the effort.

Section 319 contains no formula for allocations to States; rather, each State is encouraged to apply for as much assistance as it is able to match, although a cap of 15 percent of the appropriation per State is established.

The section requires EPA to report annually to the House Committee on Public Works and Transportation, and to the Senate Committee on Environment and Public Works, on the preceding year's programs and activities, and the progress made in reducing nonpoint source pollution.

A final report is required on January 1, 1989, on the activities carried out under this program. While improved water quality is the ultimate goal of this program, such improvements may take longer than 4 years to be fully measured and documented. Therefore, the final report should give full attention to the effectiveness of the plans, BMP's, and other measures in controlling nonpoint sources of pollution, and provide an analysis of the effectiveness of a voluntary program. The recommendations should include a determination of whether this voluntary approach should be continued, or whether the Congress should consider a regulatory and enforceable approach in the next phase of the program.

Complementing this nonpoint source control program for surface waters is section 31 of the substitute, which provides $7.5 million per year, which assist States in moving toward a comprehensive surface and ground waters nonpoint source protection program. Some States may not have the necessary information on ground water for such a comprehensive program now. Therefore, section 31 provides additional funding, on request by States with approved programs under section 319, of up to $150,000 per State per year on a 50-50 matching basis, for research, planning, ground water assessments, demonstrations, enforcement, technical assistance, education, training and other activities aimed at protecting ground water quality from nonpoint sources of pollution.

Again, I commend our committee leadership for bringing this bill forward, and urge its support by the entire House.

Mr. ROE. Mr. Chairman, I thank the gentleman.

Mr. BOLAND. Mr. Chairman, I move to strike the last word.

(Mr. BOLAND asked and was given permission to revise and extend his remarks.)

Mr. BOLAND. Mr. Chairman, earlier today the Chair sustained a point of order against an acid rain amendment offered by my colleague from Massachusetts, Mr. CONTE. At the time the amendment was brought up, I was appearing before the Rules Committee in support of a rule for my subcommittee's appropriations bill. While I respect the ruling of the Chair on the point of order, I want the Members of the House to know that I understand and share the sense of concern and frustration that lead to the amendment's being offered.

I can think of few environmental problems which pose a greater threat to our Nation's air and water supplies than does the problem of acid rain. For years, those of us from New England have been especially senstive to the effects of acid rain because we have seen those effects all around us. The degradation of the streams, lakes, forests and soil of New England, and the Northeast, as a result of acid rain have been well documented. Our region continues to suffer from this environmental catastrophe, but now it has been joined in its suffering by other regions including the Southeast and the Pacific northwest. Acid rain is no longer a local problem, it is a national problem with which we must deal.

We have studied acid rain, and studied it, and studied it. We may not know all there is to know about its causes, but we certainly know enough to realize that the emissions of nitrogen oxide and sulfur dioxide are among its principle components. And we certainly should be aware that to control acid rain, and to begin to end its devastation of our bodies of fresh water, we must control those emissions.

The New England congressional caucus, which Mr. Conte and I cochair, has worked for several years to draft a piece of legislation that would produce a consensus on a way in which to curb sulfur dioxide and nitrogen oxide emissions. We introduced that legislation last year, and it did not reach the floor. Along with 16 cosponsors, we introduced it again this year, but so far no action has been taken on it. That bill was embodied in Mr. Conte's amendment. The approach our bill takes acknowledges that acid rain is a national problem that demands a national solution. Just as no region is totally immune from all of the causes or all of the effects of acid rain, no region can be expected to bear all of the control costs by itself.

Central to the caucus bill as it was carried in the Conte amendment are two concepts: Meaningful emissions reductions and a fair sharing of the costs of producing those reductions. We seek a 50-percent reduction in emissions—12 million tons in sulfur dioxide emissions over the next decade, and 4 million tons in nitrogen oxide emissions over the next 12 years. The first phrase of those reductions would be accomplished by requiring the 50 highest emitting power plants to install modern, effective emissions control devices. The choice of the means of achieving the remaining reductions would be left to the Eastern 31 States.

We realize an Emissions Control Program will be costly. We also realize that there is a tremendous cost in terms of water quality that results from doing nothing. That cost is growing. The caucus bill and the Conte amendment spread the emissions control costs equitably among all States, save Alaska and Hawaii, by the imposition of a modest fee on generated electricity. This cost-sharing arrangement should remove what has been one of the biggest stumbling blocks to a meaningful control program—the fear that such a program would economically devastate a particular region of the country. Under the caucus plan, all regions would in some way benefit, and the cost would be manageable for each.

Mr. Chairman, the time has long since passed for action on acid rain. H.R. 8 is intended to improve the quality of our water supplies. It cannot fully accomplish that goal unless it acknowledges the danger posed to water quality by acid rain. The amendment would have added a sound and fair Acid Rain Control Program to an already fine piece of legislation. In so doing, it would have made it better, and provided this House with an opportunity to pass a clean water bill that is truly comprehensive in scope.

I regret that we did not have a chance to vote for an Acid Rain Control Program within the context of the Clean Water Act extension. I want, however, to compliment Mr. Conte for raising this important environmental issue, and giving those of us concerned with it an opportunity to bring our views to the attention of the House. I hope that this effort will hasten the day when we can thoroughly debate, and adopt, a national acid rain control measure.

● Mr. UDALL. Mr. Chairman, for some time, I have been very concerned about the issue of acid rain. Thousands of lakes and tens of thousands of streams in the Eastern United States and Canada are in peril due to acid rain. Crop yields have been lowered, our forests have been damaged and even man-made structures have suffered due to acidic precipitation.

While I recognize that the amendment offered by the gentleman from Massachusetts is not germane, and in all likelihood I would not support his amendment if it were, I commend the gentleman for his attempt to bring this issue before the full House for consideration. While there are a wide range of proposals for dealing with this problem, including my own, we have not had the benefit of debating this issue on the floor. I am hopeful that the committees of jurisdiction will allow the full House the opportunity to debate the various acid rain control proposals in the near future.●

● Mr. STARK. Mr. Chairman, I would like to congratulate the members of the Public Works Committee for their hard work on the Water Quality Renewal Act of 1985. They have done a good job with this legislation.

Chairman Roe deserves special thanks for his assistance in working with the East Bay Municipal Utility District of Oakland, CA with their stormwater infiltration problem. The regulatory resolution of the problem of stormwater infiltration into the sewer system is one of the most important issues facing the East Bay Municipal Utility District.

House Resolution 8 provides for a study by the Environmental Protection Agency Administrator to find the best method of regulating the rainfall induced overflow in the sewer system of the utility. This is important because if current regulations continue, East Bay Municipal Utility District will be required to make a minimum investment of $800 million for equipment to satisfy storm induced situations that occur only 10 days a year.

It should be noted that East Bay Municipal Utility District has been working hard on reducing the amount of rainwater infiltration into its sewer system. Approximately $300 million will be spent to reduce infiltration into the sewer system and provide treatment to the rainfall that does enter the sewer system. Additionally, East

Bay Municipal Utility District will be investing over $100 million in new treatment facilities.

I look forward to continuing to work with Chairman Roe, the Public Works Committee, and the East Bay Municipal District to solve this problem while working to preserve water quality in San Francisco Bay.●

● Mr. ECKART of Ohio. Mr. Chairman, water pollution is not a problem that will ever go away. As long as we continue producing hazardous materials, the Congress needs to continually monitor and develop policy programs that will assure that wastes produced are properly disposed of. We do not want to return to the state of the 1960's when some of our Nation's waters were so polluted that people talked of our lakes and rivers dying. There is no doubt that the passage of the 1972 Clean Water Act, that our Nation has taken great strides in addressing the pollution hazards facing its oceans, lakes, and rivers. Yet our job is by no means over. Today, the Congress is showing its continued dedication to controlling water pollution, in considering H.R. 8, the Water Quality Renewal Act.

I wholeheartedly support the efforts of the Committee on Public Works and commend them for the excellent work of its members in developing this vital legislation. Today I would like to address a particular section of the bill, which is of longstanding interest to me; enhancing the water quality of the Great Lakes.

In June, I introduced legislation with several of my colleagues from New York, Michigan, and Wisconsin, that set specific guidelines to address the pollution problems facing these waters. I am pleased to report that all of my bill is within the other body's version of the Clean Water Act and a large portion of it is included in the committee amendment we are considering right now. Later on, we will offer an amendment, directing the NOAA to create a comprehensive data base on the Great Lakes, to include the remainder of our bill in the final House version of this legislation.

The importance of the Great Lakes water quality is by no means limited to the interest of the Midwestern States, but to all the United States and Canada. The Great Lakes provide 95 percent of our fresh surface water equivalant to 20 percent of the entire world's fresh water. The Great Lakes basin, which includes all the States bordering these waters plus Ontario, Canada, contains 20 percent of our total U.S. population and 50 percent of Canada's. It supports 25 percent of our country's total income and 60 percent of Canada's. The lakes also provide a vital shipping route to the Atlantic from the Central and Eastern States and is a major source of recreational boating and fishing for scores of Americans. In short, the importance of these waters to both the United States and Canada cannot be disputed and must not be ignored.

Fifteen years ago these waters were dying. The grave pollution hazards facing the Great Lakes sparked unprecedented cooperation between the United States and Canada in identifying the pollutants and developing the means to control their damage to the lakes. The two governments endorsed the Joint Water Quality Agreement which commenced the successful eradication of a large percentage of the contents of lead, phosphorous, and mercury in the lakes.

Yet today, even greater hazards face these lakes; toxic substances. The pollutants we sought to control in the early 1970's are being replaced with toxics that are posing dangers to the lakes that could far exceed those of earlier decades. In a May 1982 report, the GAO criticized U.S. efforts in maintaining the objectives of the Joint Water Quality Agreement. The report pointed out that despite spending millions of dollars on clean water programs, the U.S. Government has neither the knowledge, the strategies, nor the proper management to keep control of the hazards threatening these lakes.

Our legislation embraces the proposals put forth by the GAO. It coordinates U.S. efforts under the leadership of the EPA and NOAA, to establish a comprehensive Water Quality Monitoring and Cleanup Program for the Great Lakes. This legislation authorizes $3 million in the first year to: direct the Great Lakes National Program Office, under the EPA, to pursue the goals of the Water Quality Agreement; to establish a toxic monitoring and surveillance network; and create a comprehensive environmental data base on the lakes which will be administered by NOAA. Finally, both the EPA and NOAA will present joint annual reports to the Congress discussing their efforts in complying with the act.

We believe that the cost required for this program is very little compared with the benefits it will provide these lakes and our citizens who use them. We do not seek to create huge new programs, but instead reorganize existing Federal efforts. During its consideration of legislation to maintain adequate water quality throughout the Nation, the Congress cannot afford to overlook the importance of the Great Lakes. I hope that our efforts to create a successful program, which has already been extended to the Chesapeake Bay, will be wholeheartedly endorsed. I rise in support of the amendment offered by the gentleman from New Jersey and urge my colleagues to support it.●

● Mr. HAMMERSCHMIDT. Mr. Chairman, I rise in support of H.R. 8, the Water Quality Renewal Act of 1985. Mr. Chairman, this is an important, I might say essential, piece of legislation. It will insure continuation of the commitment made by this country to clean water in 1972 that we have reaffirmed on a number of occasions. It is a bill that has truly been drafted in a bipartisan manner under the able leadership of the gentleman from New Jersey [Mr. Howard], chairman of the Committee on Public Works and Transportation and the ranking Republican member, the gentleman from Kentucky [Mr. Snyder]. I also want to especially thank the gentleman from New Jersey [Mr. Roe] who chairs the Subcommittee on Water Resources and the gentleman from Minnesota [Mr. Stangeland] who serves as the ranking Republican on the subcommittee.

I just want to take a moment to thank them on behalf of the people of Arkansas for the hard work and their legislative accomplishments. I would be remiss if I didn't mention two provisions in the bill which are of particular interest to my constituents. I speak of the provision contained in section 25 of the bill authorizing a 1-year study of the pollution problems at Beaver Lake, AR. I also want to commend the committee leadership for including a provision allowing for partial delegation of the National Pollutant Discharge Elimination System [NPDES] to States that are willing and able to take over a portion of this program. I believe that this will be of benefit in my State of Arkansas and in many others as well.

Again, I just want to take this opportunity to thank the committee leadership and the other members of the committee for their tireless work and dedication to the goals of clean water and I urge my colleagues to support passage of this important legislation.●

● Mr. FLORIO. Mr. Chairman, I rise to commend my colleagues from New Jersey [Mr. Howard and Mr. Roe], for their perserverance in bringing forth H.R. 8, the Water Quality Renewal Act of 1935. I am pleased that we are once again given the opportunity to debate the reauthorization of the Clean Water Act and to ensure that we have a policy that will restore our Nation's water resources.

I am especially pleased that the Committee on Public Works and Transportation has again included in this reauthorization a section authorizing funding for improving the water quality of our Nation's lakes. The clean lakes section authorizes the sum of $50 million annually through 1990 to fund grants to the State for controlling nonpoint sources of pollution which are contributing to the degradation of water quality in lakes.

One particular provision in this section has important implications for the residents of Pitman, NJ. Under the Clean Lakes Program, funding is granted for a demonstration project for the restoration of Alcyon Lake in Pitman. The project, which is authorized at $3.5 million, will include the removal and disposal of contaminated sediments from Alcyon Lake.

In January 1980, Alcyon Lake was closed to the public because BCEE (bis-2-dichlorethyl ether), a known carcinogen, was found in the water. Alcyon Lake is located 900 feet away from Lipari Landfill, which has been ranked No. 1 on the Superfund national priorities list. Analyses confirmed the fears of the community of Pitman. Toxic contaminants had indeed leached from Lipari and infiltrated Alcyon Lake.

The $3.5 million authorized in this bill will speed the recovery of Alcyon Lake by funding the removal and disposal of contaminated sediments in the Lake. Once this project is finished, a report must be submitted to both the House Public Works Committee and the Senate Environment and Public Works Committee recommending further cleanup measures.

Once again, the citizens of Pitman will be able to fish and swim safely in this body of water. Without question, this funding will help speed the recovery of Alcyon Lake. It is a strong effort to restore Alcyon Lake as an environmentally sound natural resource, and a source of recreation, pride and beauty to the residents of Pitman and Gloucester County.

The contamination of our resources by pollution is one of the most important and far-reaching concerns that face our society. Through H.R. 8, the States and the Environmental Protection Agency will be given strong direction and funding for improving and maintaining the quality of our Nation's water resources in an effective and environmentally sound manner. ●

● Mr. GALLO. Mr. Chairman, H.R. 8, the Water Quality Renewal Act of 1985, is a good bill. I am proud, as a member of the Subcommittee on Water Resources, as a member of the Committee on Public Works and Transportation, and today as a Member of the House, to have had three opportunities to be a part of the team that has crafted this fine piece of legislation.

H.R. 8 provides tools to help us with a number of serious environmental problems. For example, for the first time, runoff from farmland and city streets is recognized as having a negative effect on our environment. Also, the bill establishes a State-Federal program for cleaning up toxic hot spots, and makes projects designed to deal with combined storm water and sanitary sewer overflows eligible for grant assistance.

As I have just said, I am proud of my role in fashioning these and the other measures designed to protect our health and environment. Today, however, I want to emphasize section 16, which adds a program of grants to States to establish water pollution control revolving funds.

Under this program, each State will set up its own revolving loan fund so that it can assist its municipalities in financing the construction of wastewater treatment works. Beginning with grants of $0.6 billion in fiscal year 1986, through 1994 a total of $9.0 billion will be provided to enable States to help themselves. By 1990 these funds will replace the outright Federal grants.

We finally have come to recognize that we can't keep running to the Federal till for more money.

Yet, the need continues to grow. In 1984, the assessment of needed publicly owned wastewater treatment facilities was submitted to Congress. The needs assessment estimates that $35.8 billion of Federal money and a total of $101.7 billion is required to meet all of our municipal water pollution control needs.

In New Jersey alone there are over 200 municipal sewer systems that need help in order to meet Federal clean water standards. Without a revolving fund such as we are creating today, those municipalities can rely only on money borrowed at market rates. Obviously, such costly money makes it impossible to get the job done.

To meet our pollution control needs, we must make our dollars do double duty. We have learned to do this in New Jersey.

As minority leader of the New Jersey Assembly, I was the original sponsor of the Nation's first infrastucture bank legislation. The transportation portion of New Jersey's legislation was enacted in 1984 and provided a loan pool for the repair of roads, bridges, and mass transit systems.

In the Congress, I am proud to take part in this first infrastructure measure. This fund is a major breakthrough for infrastructure development because it will increase the number of local sewer authorities receiving Federal assistance while reducing the drain on Federal revenues.●

● Mr. MINETA. Mr. Chairman, I rise in support of H.R. 8, and urge its adoption by this House. This bill, when enacted, will protect the hard fought gains we have made in cleaning up our rivers and streams; and provide the tools we need to continue those efforts.

This legislation has been guided to the floor by the two gentlemen from New Jersey [Mr. HOWARD and Mr. ROE] who chair the Committee on Public Works and Transportation and its Subcommittee on Water Resources, respectively. I wish to congratulate them on their leadership, and the courtesy with which they have responded to all of us who have been interested in this bill.

I am particularly pleased that this bill includes a section creating a special study of toxic pollutants in San Francisco Bay. This provision is a big boost in the fight for improved water quality in the bay. The study ensures that the efforts to clean up the bay are effectively coordinated among all of the interested parties—Federal, State, and local governments, as well as industry and environmental groups.

As my colleagues know, we have become all too familar with the problems of toxic pollutants in the last few years. To be sure, San Francisco Bay has been studied in the past, but this will be the first time we have focused on the toxic problem. This study, and the management plan it will produce, will enable us to respond to this new environmental threat with a clear understanding of the problems we face and the best strategy for response.

Adoption of H.R. 8 will be a major step forward for the Nation. I urge my colleagues to join in approving this bill.

Thank you very much.●

● Mr. YOUNG of Alaska. Mr. Chairman, I rise in support of the amendment that will be offered by the gentleman from New Jersey [Mr. HOWARD].

In particular, I strongly support the provisions which will help to steamline regulatory decisions over log transfer facilities. Under current policies of the Environmental Protection Agency, log transfer facilities are subject to duplicative regulation by both the Army Corps of Engineers and EPA under two sections of the Clean Water Act. This duplicative regulation is being imposed on logging operators despite congressional intent to avoid subjecting business to more than one regulatory scheme under the act.

I believe that regulation under section 404 and State approvals required under the Clean Water Act are sufficient to meet environmental safeguards. Further regulation under section 402 is not necessary. Furthermore, I do not believe this body ever intended to treat log transfer facilities as industrial dischargers.

For some reason, EPA and the Corps of Engineers have been unable to reach an agreement on a single regulatory mechanism for the construction and operation of log transfer sites. The amendment provides clear congressional intent that the two agencies shall work out permitting in the context of a single permit wherever possible. In most cases, this permit should be a permit issued under section 404.

Mr. Chairman, I commend the chairman for this cooperation and insight into the problems faced by operators of by transfer facilities in meeting Federal environmental protection regulations.

The amendments will continue to safeguard the environment without imposing unnecessary regulation on a struggling industry. For this reason I support the amendment. ●

The **CHAIRMAN**. The question is on the Committee amendment in the nature of a substitute, as amended.

The Committee amendment in the nature of a substitute, as amended, was agreed to.

The **CHAIRMAN**. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. REID, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 8) to amend the Federal Water Pollution Control Act to provide for the renewal of the quality of the Nation's waters, and for other purposes, pursuant to House Resolution 222, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The **SPEAKER**. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the Committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The **SPEAKER**. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. DELAY

Mr. **DELAY**. Mr. Speaker, I offer a motion to recommit.

The **SPEAKER**. Is the gentleman opposed to the bill?

Mr. **DELAY**. I am, Mr. Speaker, in its present form.

The **SPEAKER**. The Clerk will report the motion to recommit.

The Clerk read as follows:

> Mr. DELAY moves to recommit the bill, H.R. 8, to the Committee on Public Works and Transportation.

The **SPEAKER**. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The **SPEAKER**. The question is on the motion to recommit.

The motion to recommit was rejected.

The **SPEAKER**. The question is on the passage of the bill.

The question was taken; and the Speaker announced that the ayes appeared to have it.

RECORDED VOTE

Mr. **LUNGREN**. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 340, noes 83, not voting 10, as follows:

[Roll No. 250]

AYES—340

Ackerman
Addabbo
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Aspin
Atkins
AuCoin
Badham
Barnard
Barnes
Bateman
Bates
Bedell
Beilenson
Bennett
Bentley
Berman
Bevill
Biaggi
Bliley
Boehlert
Boggs
Boland
Boner (TN)
Bonker
Borski
Bosco
Boucher
Boxer
Breaux
Brooks
Brown (CA)
Bruce
Bryant
Burton (CA)
Bustamante
Byron
Callahan
Campbell
Carney
Carper
Carr
Chappell
Chappie
Clay
Clinger
Coelho
Coleman (MO)
Coleman (TX)
Collins
Conte
Conyers
Cooper
Coughlin
Courter
Coyne
Crockett
Daniel
Darden
Daschle
Davis
de la Garza
Dellums
Derrick
Dickinson
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dowdy
Duncan
Durbin
Dwyer
Dymally
Dyson
Early
Eckart (OH)
Edgar
Edwards (CA)
Emerson
English
Erdreich
Evans (IA)
Evans (IL)
Fascell
Fazio
Feighan
Fiedler
Fields
Fish
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Fowler
Frank
Frost
Fuqua
Gallo
Garcia
Gaydos
Gejdenson
Gekas
Gephardt
Gibbons
Gilman
Gingrich
Gonzalez
Gordon
Gradison
Gray (IL)
Gray (PA)
Green
Guarini
Gunderson
Hall (OH)
Hall, Ralph
Hamilton
Hammerschmidt
Hatcher
Hawkins
Hayes
Heftel
Hertel
Hillis
Holt
Horton
Howard
Hoyer
Huckaby
Hughes
Hutto
Hyde
Jacobs
Jeffords
Jenkins
Johnson
Jones (NC)
Jones (OK)
Jones (TN)
Kanjorski
Kaptur
Kastenmeier
Kemp
Kennelly
Kildee
Kleczka
Kolter
Kostmayer
LaFalce
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Lent
Levin (MI)
Levine (CA)
Lewis (CA)
Lewis (FL)
Lightfoot
Lipinski
Livingston
Lloyd
Long
Lowery (CA)
Lowry (WA)
Lujan
Luken
Lundine
MacKay
Madigan
Manton
Markey
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCain
McCandless
McCloskey
McCollum
McCurdy
McDade
McEwen
McGrath
McHugh
McKernan
McKinney
Mica
Mikulski
Miller (CA)
Miller (OH)
Mineta
Mitchell
Moakley
Molinari
Mollohan
Montgomery
Moody
Moore
Moorhead
Morrison (CT)
Mrazek
Murphy
Myers
Natcher
Neal
Nelson
Nichols
Nowak
O'Brien
Oakar
Oberstar
Obey
Ortiz
Owens
Packard
Panetta
Parris
Pashayan
Pease
Penny
Pepper

Perkins
Petri
Pickle
Porter
Price
Quillen
Rahall
Rangel
Ray
Regula
Reid
Richardson
Ridge
Rinaldo
Robinson
Rodino
Roe
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Rudd
Russo
Sabo
Savage
Saxton
Schaefer
Scheuer
Schroeder
Schulze
Schumer
Seiberling
Sharp
Shaw
Shelby
Shuster
Sikorski
Sisisky
Skeen
Skelton
Slattery
Slaughter
Smith (FL)
Smith (IA)
Smith (NJ)
Snowe
Snyder
Solarz
Solomon
Spence
Spratt
St Germain
Staggers
Stallings
Stangeland
Stark
Stokes
Stratton
Studds
Sundquist
Swift
Synar
Tallon
Tauzin
Taylor
Thomas (CA)
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Walgren
Watkins
Waxman
Weaver
Weiss
Wheat
Whitehurst
Whitley
Whitten
Williams
Wilson
Wirth
Wise
Wolf
Wolpe
Wortley
Wright
Wyden
Yates
Yatron
Young (AK)
Young (FL)
Young (MO)

NOES—83

Archer
Armey
Bartlett
Barton
Bereuter
Bilirakis
Boulter
Brown (CO)
Broyhill
Burton (IN)
Chandler
Cheney
Coats
Cobey
Coble
Combest
Craig
Crane
Dannemeyer
Daub
DeLay
DeWine
Dornan (CA)
Dreier
Eckert (NY)
Edwards (OK)
Fawell
Franklin
Frenzel
Goodling
Gregg
Grotberg
Hansen
Hartnett
Hendon
Henry
Hiler
Hopkins
Hunter
Ireland
Kasich
Kindness
Kolbe
Kramer
Lagomarsino
Latta
Leach (IA)
Loeffler
Lott
Lungren
Mack
Marlenee
McMillan
Meyers
Michel
Miller (WA)
Morrison (WA)
Nielson
Olin
Oxley
Pursell
Ritter
Roberts
Roemer
Schuette
Sensenbrenner
Shumway
Siljander
Smith (NE)
Smith (NH)
Smith, Denny
Smith, Robert
Stenholm
Strang
Stump
Sweeney
Swindall
Tauke
Walker
Weber
Whittaker
Wylie
Zschau

NOT VOTING—10

Bonior (MI)
Broomfield
Downey
Glickman
Hefner
Hubbard
Lantos
Monson
Murtha
Schneider

☐ 1730

Mr. HUNTER and Mr. ZSCHAU changed their votes from "aye" to "no."

Mr. LIVINGSTON changed his vote from "no" to "aye."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 8, WATER QUALITY RENEWAL ACT OF 1985

Mr. HOWARD. Mr. Speaker, I ask unanimous consent that, in the engrossment of the bill H.R. 8 the Clerk be authorized to correct section numbers, cross references, and the table of contents and make such other technical and conforming amendments as may be necessary to reflect the actions of the House in amending the bill H.R. 8.

The **SPEAKER.** Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Mr. HOWARD. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1128) to amend the Clean Water Act, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The **SPEAKER.** Is there objection to the request of the gentleman from New Jersey?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1123

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Clean Water Act Amendments of 1985".

TITLE I—REGULATORY AMENDMENTS

AUTHORIZATION

SEC. 101. (a) Section 104(u)(1) of the Clean Water Act is amended by inserting immediately following "1982" the phrase ", and not to exceed $22,770,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989".

(b) Section 104(u)(2) of the Clean Water Act is amended by inserting immediately following "1982" the phrase ", and not to exceed $3,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989".

(c) Section 104(u)(3) of the Clean Water Act is amended by striking "and" after "1981," and by inserting immediately following "1982" the phrase ", and not to exceed $1,500,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989".

(d) Section 106(a)(2) of the Clean Water Act is amended by striking "and" after "1981" and inserting in lieu thereof a comma and by inserting ", 1986, 1987, 1988, and 1989" immediately following "1982".

(e) Section 112(c) of the Clean Water Act is amended by striking "and" after "1981," and inserting immediately following "1982" the phrase ", and $7,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989".

(f) Section 314(c)(2) of the Clean Water Act is amended by striking "and" after "1981," and inserting immediately following "1982" the phrase ", and $30,000,000 per fiscal year for fiscal years 1986, 1987, 1988, and 1989".

(g) Section 517 of the Clean Water Act is amended by striking "and" after "1981," and inserting immediately following "1982" the phrase ", and $160,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989".

SMALL FLOWS CLEARINGHOUSE

Sec. 102. Section 104(q) of the Clean Water Act is amended by adding the following new paragraph:

"(4) Notwithstanding section 205(d) of this Act, from funds that are set aside by States under section 205(i) of this Act and not obligated by the end of the twenty-four month period provided under section 205(d), the Administrator shall award a grant under this section in the amount of $1,000,000 or such unobligated amount, whichever is less, in each year, to support a National Clearinghouse to collect and disseminate information on small flows and innovative or alternative technologies, consistent with paragraph (3).".

COMPLIANCE DATES

Sec. 103. (a) Section 301(b)(2)(C) of the Clean Water Act is amended by striking "not later than July 1, 1984," and inserting immediately after "of this paragraph" the following: "as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than July 1, 1988".

(b) Section 301(b)(2)(E) of the Clean Water Act is amended by striking "not later than July 1, 1984," and inserting in lieu thereof "as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than July 1, 1988, compliance with".

(c) Section 301(b)(2)(F) of the Clean Water Act is amended by striking "not" after "subparagraph (A) of this paragraph" and inserting in lieu thereof "as expeditiously as practicable but in no case", and by striking "or not later than July 1, 1984," through the end of the sentence and inserting in lieu thereof "and in no case later than July 1, 1988".

(d) Section 301(b) of the Clean Water Act is amended by adding the following new paragraph:

"(3)(A) for effluent limitations under paragraph (1)(A)(i) of this subsection promulgated after January 1, 1982, and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for such industrial category issued before such date, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than July 1, 1988; and

"(B) for any effluent limitation in accordance with paragraph (1)(A)(i), (2)(A)(i), or (2)(E) of this subsection established only on the basis of section 402(a)(1) in a permit issued after enactment of the Clean Water Act Amendments of 1985, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established, and in no case later than July 1, 1988.".

OCEAN WAIVER

Sec. 104. (a) Section 301(h)(5) of the Clean Water Act is amended to read as follows:

"(5) sources introducing waste into such treatment works are in compliance with all applicable pretreatment requirements and the applicant has assured continued compliance with such requirements and, in the case of any treatment works serving a population of five thousand or more, the applicant has adopted and is enforcing a program to control the entrance of toxic pollutants from industrial sources into such treatment works, comparable to that required by section 402(b)(8);".

(b) Section 301(h) of the Clean Water Act is amended by—

(1) in paragraph (7), striking the period immediately after "the permit" and inserting in lieu thereof a semicolon.

(2) adding immediately after paragraph (7) the following new paragraph:

"(8) the applicant at the time such modification becomes effective will be discharging effluent which has received at least primary or equivalent treatment. For the purposes of this paragraph, "primary or equivalent treatment" means treatment by screening, sedimentation, and skimming adequate to remove at least 30 per centum of the biological oxygen demanding material and of the suspended solids in the treatment works influent, and disinfection, where appropriate.";

(3) in that portion of subsection (h) following new paragraph (8) as added by this Act,

(A) adding immediately after the first sentence thereof the following new sentence: "Such marine waters must exhibit characteristics assuring that water providing dilution does not contain significant amounts of previously discharged effluent from such treatment works."; and

(B) adding at the end thereof the following: "No permit issued under this subsection shall authorize the discharge of any pollutant into saline estuarine waters which at the time of application do not support a balanced indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish, fish and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed discharge.".

(c) Section 301(j)(1)(A) of the Clean Water Act is amended by inserting before the semicolon the following: ", except that a publicly owned treatment works which prior to December 31, 1982, had a contractural arrangement to use a portion of the capacity of an ocean outfall operated by another publicly owned treatment works which has applied for or received a modification under subsection (h) of this section, may apply for a modification under subsection (h) in its own right not later than thirty days after the enactment of the Clean Water Act Amendments of 1985".

MODIFICATION FOR NONCONVENTIONAL POLLUTANTS

Sec. 105. (a) Section 301(g)(1) of the Clean Water Act is amended by striking all preceding "upon a showing by the owner or operator" and inserting in lieu thereof "The Administrator, with the concurrence of the State, may modify the requirements of subsection (b)(2)(A) of this section with respect to the discharge from any point source of ammonia, chlorine, color, iron, or total phenols (4AAP) (when determined by the Administrator to be a nonconventional pollutant under this Act)".

(b) Section 301(g) of the Clean Water Act is amended by adding the following new paragraphs:

"(3) The Administrator may evaluate pollutants subject to this subsection prior to the enactment of the Clean Water Act Amendments of 1985, and if the Administrator determines that for one or more pollutants satisfactory test methods and data are available to make the determination required by paragraph (1), may recommend to the Congress the inclusion of such pollutants under this subsection.

"(4) Any request for a modification under this subsection shall be deemed to have been denied, if not approved by final agency action within one year after submission to the Administrator.

"(5) The amendment made to this subsection by the Clean Water Act Amendments of 1985 shall apply to all modification requests under this subsection pending on the date of enactment of the Clean Water Act Amendments of 1985. Such amendment to this subsection shall not have the effect of extending or reopening the deadline established in section 301(j)(1)(B).".

(c) Section 301(j)(2) of the Clean Water Act is amended by inserting after the first sentence thereof the following: "An application for a modification under subsection (g) shall not stay the applicant's obligation to comply with effluent limitations for all pollutants not the subject of an application for modification, and nothing in this section shall preclude the Administrator (or the State as appropriate) from issuing a permit containing effluent limitations for all pollutants not subject to a stay under this subsection pending a final decision on the request for a modification.".

(d) Section 301(g)(1) is amended by inserting "(1)" immediately after "subsection (b)(2)(A)".

FUNDAMENTALLY DIFFERENT FACTORS

SEC. 106. (a) Section 301 of the Clean Water Act is amended by adding the following new subsections:

"(n)(1) The Administrator, with the concurrence of the State, may establish an alternative requirement under subsection (b)(2) or section 307(b) for a facility that modifies the requirements of national effluent limitation guidelines or categorical pretreatment standards that would otherwise be applicable to such facility, if the owner or operator of such facility demonstrates to the satisfaction of the Administrator that—

"(A) the facility is fundamentally different with respect to the factors (other than cost) specified in section 304 (b) or (g) and considered by the Administrator in establishing such national effluent limitation guidelines or categorical pretreatment standards;

"(B) the application is based solely on information and supporting data submitted to the Administrator during the rulemaking for establishment of the applicable national effluent limitation guidelines or categorical pretreatment standard specifically raising the factors that are fundamentally different for such facility;

"(C) the alternative requirement is no less stringent than justified by the fundamental difference; and

"(D) the alternative requirement will not result in a non-water quality environmental impact which is markedly more adverse than the impact considered by the Administrator in establishing such national effluent limitation guideline or categorical pretreatment standard.

"(2)(A) An application for an alternative requirement under this subsection shall be submitted to the Administrator not later than one hundred twenty days after the publication of the final effluent limitation guideline or categorical pretreatment standard in the Federal Register. The Administrator shall deny any application that is not complete, without providing an opportunity for reapplication.

"(B) An application for an alternative requirement under this subsection shall be deemed to have been denied, if not approved by final agency action within two hundred forty days after submission to the Administrator.

"(C) For the purposes of this subsection, an application for an alternative requirement based on fundamentally different factors which is pending on the date of enactment of the Clean Water Act Amendments of 1985 shall be deemed to have been submitted to the Administrator thirty days after such date of enactment.

"(3) An application for an alternative requirement under this subsection shall not stay the applicant's obligation to comply with the effluent limitation guideline or categorical pretreatment standard which is the subject of the application.

"(4) The authority of this subsection shall apply only to those primary industrial categories identified in the permit regulations issued under section 402 as of the date of enactment of the Clean Water Act Amendments of 1985.

"(o) The Administrator shall prescribe and collect from each applicant fees reflecting the reasonable administrative costs incurred in reviewing and processing applications for modifications submitted to the Administrator pursuant to section 301 (c), (g), (h), (i), (m), and (n), section 304(d)(4), and section 316(a) of this Act. All amounts collected by the Administrator under this subsection shall be deposited into miscellaneous receipts of the Treasury.".

(b) Section 301(l) of the Clean Water Act is amended by striking "The" and inserting in lieu thereof "Other than as provided in subsection (n) of this section, the".

WATER QUALITY-BASED EFFLUENT LIMITATIONS AFTER BAT ATTAINMENT

SEC. 107. (a) Section 305 of the Clean Water Act is amended by adding the following new subsection:

"(c) Each State shall prepare and submit to the Administrator and the Congress within two years after the enactment of the Clean Water Act Amendments of 1985, and revise biennially thereafter, an identification of—

"(1) those waters within or adjacent to such State which after the application of effluent limitations required under section 301(b)(2) of this Act cannot reasonably be anticipated to attain or maintain (A) water quality standards for such waters reviewed, revised or adopted in accordance with section 303(c)(2)(B) of this Act, due to toxic pollutants, or (B) that water quality which shall assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water; and

"(2) those waters within or adjacent to such State which are public water supplies or otherwise important to public health protection, or which have a high quality use designation, and which because of such use and current or potential pollution are of high priority to such State.

In the case of any State which fails to submit the identification required by paragraph (1), or which submits an incomplete identification, the Administrator shall promptly prepare an identification in accordance with paragraph (1).".

(b) Section 304(a) of the Clean Water Act is amended by adding the following new paragraphs:

"(7) The Administrator, after consultation with appropriate State agencies and on the basis of criteria and information published under paragraphs (1) and (2) of this subsection, shall develop and publish, within nine months after the date of enactment of the Clean Water Act Amendments of 1985, guidance to the States on performing the identification required by section 305(c)(1) of this Act.

"(8) The Administrator, after consultation with appropriate State agencies and within two years after the date of enactment of the Clean Water Act Amendments of 1985, shall develop and publish information on methods for establishing and measuring water quality criteria for toxic pollutants on other bases than pollutant-by-pollutant criteria, including biological monitoring and assessment methods.".

(c) Section 303(c)(2) of the Clean Water Act is amended by inserting "(A)" after "(2)" and by adding the following new subparagraph:

"(B) Whenever a State reviews water quality standards pursuant to paragraph (1) of this subsection, or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria for all toxic pollutants listed pursuant to section 307(a)(1) of this Act, the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses. Such criteria shall be specific numerical criteria for such toxic pollutants and in addition may include criteria based on biological monitoring or assessment methods consistent with information published pursuant to section 304(a)(8). Particular attention shall be given to toxic pollutants which are highly persistent in the environment, bioaccumulative, or known or suspected carcinogens, mutagens, or teratogens. Nothing in this section shall be construed to limit or delay the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods or previously adopted numerical criteria.".

(d) Section 303(d) of the Clean Water Act is amended by adding the following new paragraph:

"(4) Not later than two years after the submittal of the identification required by section 305(c)(1) of this Act, each State shall establish effluent limitations for point sources discharging into each portion of the navigable waters identified under section 305(c)(1)(A) as necessary to attain applicable water quality standards, taking into account any substantial nonpoint source contributions of toxic pollutants and existing or planned controls on all sources. Such effluent limitations shall be incorporated into permits under section 402 of this Act, which shall provide for compliance as expeditiously as practicable, but in no event later than three years after the establishment of such effluent limitation.".

(e)(1) Section 302(a) of the Clean Water Act is amended by (1) inserting after "in the judgment of the Administrator" the phrase ", or as identified under section 305(c)"; and (2) inserting after "protection of" the phrase "public health,".

(2) Section 302(b) of the Clean Water Act is amended to read as follows:

"(b)(1) Prior to establishment of any effluent limitation pursuant to subsection (a) of this section, the Administrator shall publish such proposed limitation and within ninety days of such publication hold a public hearing.

"(2)(A) The Administrator, with the concurrence of the State, may issue a permit which modifies the effluent limitations required by subsection (a) of this section for pollutants other than toxic pollutants, if the applicant demonstrates at such hearing that (whether or not technology or other alternative control strategies are available) there is no reasonable relationship between the economic and social costs and the benefits to be obtained (including attainment of the objective of this Act) from achieving such limitation.

"(B) The Administrator, with the concurrence of the State, may issue a permit which modifies the effluent limitations required by subsection (a) of this section for toxic pollutants for a single period not to exceed five years, if the applicant demonstrates to the satisfaction of the Administrator that such modified requirements (1) will represent the maximum degree of control within the economic capability of the owner and operator of the source, and (2) will result in reasonable further progress beyond the requirements of section 301(b)(2) toward the requirements of subsection (a) of this section.".

(f) Section 304 of the Clean Water Act is amended by adding the following new subsection:

"(l) Within twelve months of the date of enactment of the Clean Water Act Amendments of 1985, and biennially thereafter, the Administrator shall publish in the Federal Register a plan which shall:

"(A) establish a schedule for the annual review and revision of promulgated effluent guidelines, in accordance with subsection (b) of this section;

"(B) identify categories of sources discharging toxic or nonconventional pollutants for which guidelines under subsection (b)(2) of this section and section 306 have not previously been published; and

"(C) establish a schedule for promulgation of effluent guidelines for categories identified in subparagraph (B), under which promulgation of such guidelines shall be no later than four years after the date of enactment for categories identified in the first published plan or three years after the publication of the plan for categories identified in later published plans.

"(2) The Administrator shall provide for public review and comment on the plan prior to final publication.".

INDIRECT DISCHARGE OF CONVENTIONAL POLLUTANTS

SEC. 108. Section 402 of the Clean Water Act is amended by adding at the end thereof the following new subsection:

"(m) In issuing a permit under this section, the Administrator shall not require pretreatment by dischargers of conventional pollutants identified pursuant to section 304(b)(4) of this Act as a substitute for municipal treatment adequate to meet the requirements of a permit issued under this section for a treatment works (as defined in section 212 of this Act) which is publicly owned if such discharger is in compliance with all applicable requirements of local pretreatment programs approved under subsection (b)(8) of this section. Nothing in this subsection shall affect the Administrator's authority under sections 307 and 309 of this Act, affect State and local authority under sections 307(b)(4) and 510 of this Act, relieve such treatment works of its obligations to meet requirements established under this Act, or preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.".

CIVIL AND CRIMINAL PENALTIES

Sec. 109. (a) Section 309(d) is amended by—

(1) inserting ", or any requirement imposed in a pretreatment program approved under section 402(a)(3) and (b)(8) of this Act," immediately after "section 404 of this Act by a State";

(2) deleting "$10,000 per day of such violation" and substituting "$25,000 per day for each violation";

(3) adding the following at the end thereof: "In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require.".

(b) No State shall be required to modify a permit program approved or submitted under section 402 of the Clean Water Act as a result of the amendment made by subsection (a) of this section before July 1, 1987.

(c) Section 404(s) of the Clean Water Act is amended by striking paragraph (4), by redesignating paragraph (5) as paragraph (4), and in redesignating paragraph (4), by—

(1) deleting "$10,000 per day of such violation" and substituting "$25,000 per day for each violation";

(2) adding the following at the end thereof: "In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require.".

(d) Section 309 of the Clean Water Act is amended by adding a new subsection (g) as follows:

"(g)(1) Administrative Penalties.—In addition to any other relief provided, whenever on the basis of any information available the Administrator finds that any person has violated section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or has violated any permit condition or limitation implementing any of such sections in a permit issued under sections 402 of this Act by him or by a State, or in a permit issued under section 404 by a State, or any requirement imposed in a pretreatment program approved under section 402 (a)(3) and (b)(8) of this Act, the Administrator may, after notice to the State in which the violation occurs, issue an order assessing a civil penalty of not more than $10,000 per day for each violation, up to a maximum administrative penalty of $125,000. In addition to any other relief provided, whenever on the basis of any information available the Secretary of the Army finds that any person has violated any permit condition or limitation in a permit issued under section 404 of this Act by the Secretary of the Army, the Secretary may, after notice to the State in which the violation occurs, issue an order assessing a civil penalty of not more than $10,000 per day for each violation, up to a maximum administrative penalty of $125,000.

"(2) The authority provided in paragraph (1) of this subsection shall expire on September 30, 1990.

"(3) Procedure.—(A) A civil penalty assessed by the Administrator or the Secretary of the Army under this subsection shall be by an order made after opportunity (provided in accordance with this subparagraph) for a hearing. Before issuing the order, the Administrator or the Secretary of the Army shall give to the person to be assessed a civil penalty written notice of the Administrator's or Secretary's proposal to issue such order and the opportunity to request, within thirty days of the date the notice is received by such person, a hearing on the proposed order. Such hearing shall not be subject to section 554 or 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.

"(B) The Administrator or the Secretary of the Army shall provide public notice of and reasonable opportunity to comment on any proposed assessment.

"(C) Any citizen who comments on a proposed assessment under subparagraph (B) shall be given notice of any hearing held under this subsection and of any order assessing a penalty. In any hearing held under subparagraph (A), such citizen shall have a reasonable opportunity to be heard and to present evidence. If no hearing is held prior to issuance of the order assessing the penalty, then upon presentation by such citizen, within thirty days of issuance of the order, of evidence that such order was inadequate or improper, the Administrator or the Secretary of the Army shall set aside such order immediately and provide a hearing in accordance with subparagraph (A) on the proposed order.

"(D) Any order issued under this subsection shall become final thirty days following its issuance unless an appeal is taken pursuant to paragraph (6) or the order is set aside pursuant to subparagraph (C).

"(4) Content of Order.—In determining the amount of a civil penalty, the Administrator or the Secretary of the Army shall take into account the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require.

"(5) Effect of Order.—(A) Action taken by the Administrator or the Secretary of the Army pursuant to this subsection shall not affect or limit the Administrator's or Secretary's authority to enforce any provision of this Act: *Provided, however*, That any violation with respect to which the Administrator or the Secretary of the Army has commenced and is diligently prosecuting an action under this subsection, or for which the Administrator or the Secretary of the Army has issued a final order not subject to further judicial review and the violator paid a penalty assessed under this subsection, shall not be the subject of a civil penalty action under section 309(d), section 311(b), or section 505 of this Act: *Provided further*, That the foregoing limitation on civil penalty actions under section 505 of this Act shall not apply with respect to any violation for which (i) a civil action under section 505(a)(1) of this Act has been filed prior to commencement of an action under this subsection, or (ii) a notice of violation under section 505(b)(1) of this Act has been given prior to commencement of an action under this subsection and an action under section 505(a)(1) of this Act is filed prior to 120 days after such notice is given.

"(B) Nothing in this subsection shall change the procedures now existing under other subsections of section 309 of this Act for issuance and enforcement of orders by the Administrator.

"(C) No action by the Administrator or the Secretary of the Army pursuant to this subsection shall affect any person's obligation to comply with any section of this Act or with the terms and conditions of any permit issued pursuant to section 402 or 404 of this Act.

"(6) Judicial Review.—Any person against whom a civil penalty order is issued or who commented on a proposed assessment pursuant to paragraph (3) may file an appeal of such order in the United States district court for the District of Columbia or in the district in which the violation is alleged to have occurred. This appeal may only be filed within the thirty-day period beginning on the date the civil penalty order is issued. Appellant shall simultaneously send a copy of the appeal by certified mail to the Administrator or the Secretary of the Army and to the Attorney General. The Administrator or the Secretary of the Army shall promptly file in such court a certified copy of the record on which the order was issued. The district court shall not set aside or remand such order unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion and shall not impose additional civil penalties for the same violation unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion.

"(7) Collection.—If any person fails to pay an assessment of a civil penalty—

"(A) after an order is final under paragraph (3), or

"(B) after a court in an action brought under paragraph (6) has entered a final judgment in favor of the Administrator or the Secretary of the Army,

the Administrator or the Secretary of the Army shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus costs, attorneys' fees, and interest at currently prevailing rates from the date of the final order or the date of such final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

"(8) Subpoena.—The Administrator or the Secretary of the Army may, in connection with administrative proceedings under this subsection, issue subpoenas compelling the attendance and testimony of witnesses and subpoenas duces tecum, and may request the Attorney General to bring an action to enforce any subpoena under this section. The district courts shall have jurisdiction to enforce such subpoenas and impose sanctions.".

(e) Section 309(c) of the Clean Water Act is amended to read as follows:

"(c)(1) Any person who (A) negligently violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(a)(3) and (b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, or who (B) negligently introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage, or, other than in compliance with all applicable Federal, State or local requirements or permits, causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State, shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both.

"(2) Any person who (A) knowingly violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(a)(3) and (b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, or who (B) knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage, or, other than in compliance with all applicable Federal, State or local requirements or permits, causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State, shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than three years, or by both.

"(3)(A) Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than fifteen years, or both. A defendant that is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than $1,000,000.

"(B) For the purpose of subparagraph (A) of this paragraph—

"(i) In determining whether a defendant

who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury—

"(I) the person is responsible only for actual awareness or actual belief that he possessed; and

"(II) knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant:

Provided, That in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information.

"(ii) It is an affirmative defense to prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

"(I) an occupation, a business, or a profession; or

"(II) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent. The defendant may establish an affirmative defense under this subparagraph by a preponderance of the evidence.

"(iii) The term 'organization' means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

"(iv) The term 'serious bodily injury' means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

"(4) Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or by both.

"(5) If a conviction is for a violation of paragraph (1), (2), (3), or (4) of this subsection committed after a first conviction of such person under the same paragraph, the maximum punishment under the respective paragraph shall be doubled with respect to both fine and imprisonment.

"(6) For the purpose of paragraphs (1), (2), (3), and (4) the term 'person' shall mean, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.

"(7) For the purpose of paragraphs (1) and (2), the term 'hazardous substance' shall mean (A) any substance designated pursuant to section 311(b)(2)(A) of this Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of this Act, and (E) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.".

"(8) Whenever any action is brought under this section in a court of the United States, the plaintiff shall provide a copy of the complaint to the Attorney General of the United States and to the Administrator. No consent judgment shall be entered in an action brought under this section in which the United States is not a party prior to forty-five days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator.

"(9) The Secretary shall prepare and submit a report to the Congress, not later than December 1, 1987, which shall examine and analyse various enforcement mechanisms for use by the Secretary, including an administrative civil penalty mechanism. Such report shall also examine, in consultation with the Comptroller General, the efficacy of the Secretary's existing enforcement authorities, and shall make recommendations for improvements in their operation.".

PARTIAL NPDES PROGRAM APPROVAL

Sec. 110. (a) Section 402(b) of the Clean Water Act is amended by—

(1) inserting ", or part of a permit program in accordance with paragraph (10) of this subsection," immediately after "its own permit program" in the first full sentence; and

(2) adding at the end thereof the following new paragraph:

"(10) In the event a Governor submits a plan to administer part of a permit program, the Administrator may approve such plan upon a showing that—

"(A)(i) the plan provides for administration of permit program components which represent a significant and identifiable part of the State program authorized by this section; and

"(ii) the plan provides for and the State agrees to make all reasonable efforts to assume administration of the remainder of the program by a specified future date not to exceed five years from submission of the State's initial plan; or

"(B)(i) the plan provides for administration of a permit program for one or more discharge categories such as Federal facilities, municipal or industrial categories, or any other category of dischargers which represent a significant and identifiable part of the permit program in the State; and

"(ii) the plan covers all categories of discharges under the jurisdiction of the State agency or department responsible for administering the plan and represents a complete permit program for all categories of discharges contained in the plan. For purposes of the preceding sentence, 'a complete permit program,' means one for which adequate authority exists to carry out each of the activities listed in paragraphs (1) through (9) of this subsection.".

(b) Section 402(c)(1) of the Clean Water Act is amended by striking "as to those navigable waters" and inserting in lieu thereof "as to those activities and discharges".

(c) Section 402(c) of the Clean Water Act is amended by adding a new paragraph (4) as follows:

"(4) In the event a determination is made (A) by a State to return administration of the program to the Administrator or (B) by the Administrator to withdraw approval pursuant to paragraph (3) of this subsection, return of administration or withdrawal of approval may only be made of the entire program currently being administered by the State.".

JUDICIAL REVIEW AND AWARD OF FEES

SEC. 111. (a) Section 509(b)(1) of the Clean Water Act is amended by (1) striking the phrase "transacts such business" and inserting in lieu thereof, "transacts business which is directly affected by such action"; and (2) striking "ninety" and "ninetieth" and inserting in lieu thereof "one hundred and twenty" and "one hundred and twentieth", respectively.

(b) Section 509(b) of the Clean Water Act is amended by adding at the end thereof the following new paragraphs:

"(3)(A) If applications for review of the same agency action have been filed under paragraph (1) of this subsection in two or more Circuit Courts of Appeals of the United States and the Administrator has received written notice of the filing of one or more applications within thirty days or less after receiving written notice of the filing of the first application, then the Administrator shall promptly advise in writing the Administrative Office of the United States Courts that applications have been filed in two or more Circuit Courts of Appeals of the United States, and shall identify each court for which he has written notice that such applications have been filed within thirty days or less of receiving written notice of the filing of the first such application. Pursuant to a system of random selection devised for this purpose, the Administrative Office thereupon shall, within three business days of receiving such written notice from the Administrator, select the court in which the record shall be filed from among those identified by the Administrator. Upon notification of such selection, the Administrator shall promptly file the record in such court. For the purpose of review of agency action which has previously been remanded to the Administrator, the record shall be filed in the Circuit Court of Appeals of the United States which remanded such action.

"(B) Where applications have been filed under paragraph (1) of this subsection in two or more Circuit Courts of Appeals of the United States with respect to the same agency action and the record has been filed in one of such courts pursuant to paragraph (3)(A), the other courts in which such applications have been filed shall promptly transfer such applications to the Circuit Court of Appeals of the United States in which the record has been filed. Pending selection of a court pursuant to paragraph (3)(A), any court in which an application has been filed under paragraph (1) of this subsection may postpone the effective date of the agency action until fifteen days after the Administrative Office has selected the court in which the record shall be filed.

"(C) Any court in which an application with respect to any agency action has been filed under paragraph (1) of this subsection, including any court selected pursuant to paragraph (3)(A), may transfer such application to any other Circuit Court of Appeals of the United States for the convenience of the parties or otherwise in the interest of justice.

"(4) In any judicial proceeding under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party whenever it determines that such award is appropriate.".

(c) Section 505(d) of the Clean Water Act is amended by inserting "prevailing or substantially prevailing" before "party" in the first sentence thereof.

NONPOINT SOURCE POLLUTION

SEC. 112. (a) Title III of the Clean Water Act is amended by adding the following new section:

"NONPOINT SOURCE POLLUTION MANAGEMENT PROGRAM

"SEC. 319. (a)(1) Each State, by itself or in combination with adjacent States, shall, after notice and opportunity for public comment, submit to the Administrator, within eighteen months after the date of enactment of the Clean Water Act Amendments of 1985, a proposed nonpoint source pollution management program which shall—

"(A) identify those waters within its boundaries which without additional action to control nonpoint sources of pollution cannot reasonably be expected to attain or maintain (i) applicable water quality standards, or (ii) the goals and requirements of the Act;

"(B) designate categories or subcategories of nonpoint sources of pollutants or, where appropriate, particular nonpoint sources, that contribute significant pollution loadings to the waters identified under subparagraph (A);

"(C) identify best management practices which will be undertaken to reduce pollutant loadings resulting from each category, subcategory or particular nonpoint source designated under subparagraph (B), taking into account the impact of the proposed practice on ground water quality;

"(D) identify programs (including, as appropriate, nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) to achieve implementation of the best management practices by the categories, subcategories, and particular nonpoint sources designated under subparagraph (B);

"(E) include a schedule containing annual milestones for (i) utilization of the program implementation methods identified in subparagraph (D), and (ii) implementation of the best management practices identified in subparagraph (C) by the categories, subcategories, or particular nonpoint sources designated under subparagraph (B). Such schedule shall provide for utilization of the program implementation methods and implementation of best management practices at the earliest practicable date;

"(F)(i) include a statement from the attorney general of such State or States (for the attorney for those State water pollution control agencies which have independent legal counsel) that the laws of such State or States, as the case may be, provide adequate authority to carry out the described program, or what additional authorities would be necessary to do so, and (ii) if this statement identifies additional needed authorities, include a schedule and commitment by the State to seek such authorities as expeditiously as practicable; and

"(G) include an identification of Federal financial assistance programs and Federal development projects for which the State will review individual assistance applications or development projects for their effect on water quality pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983, to determine whether such assistance applications or development projects would be consistent with and further the purposes and objectives of the program prepared under this subsection. For the purposes of this paragraph, identification shall not be limited to the assistance programs or development projects subject to the Executive Order 12372 but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the State's nonpoint source pollution management program.

"(2) In developing the nonpoint source management program required by this section, the State (A) may rely upon information developed pursuant to sections 208, 303(e), 304(f), 305(b), and 314, and other information as appropriate, and (B) may utilize appropriate elements of the waste treatment management plans developed pursuant to section 208(b), to the extent such elements are consistent with and fulfill the requirements of this section.

"(3) In developing and implementing the management program described in this subsection, a State may make use of local agencies or organizations.

"(b)(1) Within six months of the date of receipt of a proposed nonpoint source management program, the Administrator shall, after notice and opportunity for public comment, make a determination whether the State's proposed management program meets the requirements of subsection (a)(1) of this section.

"(2) If the Administrator determines that the proposed management program does not meet the requirements of subsection (a)(1) of this section, he shall within six months of receipt of the proposed program notify the State of any revisions or modifications necessary to obtain approval. The State shall thereupon have an additional three months to submit its revised management program and the Administrator shall approve or disapprove such revised program within three months of receipt.

"(3) Pursuant to paragraph (1) or (2) of this subsection, the Administrator shall approve those State management programs that he determines meet the requirements of subsection (a)(1) of this section.

"(4) If the Administrator fails to approve the State management program pursuant to paragraph (1) of this subsection or fails to notify the State of necessary revisions pursuant to paragraph (2) of this subsection within six months of receipt of the State program, or if he fails to approve or disapprove the program pursuant to paragraph (2) of this subsection within three months of receipt of the revised program, the program shall be deemed to have been approved by the Administrator.

"(c) If a State fails to submit a nonpoint source pollution management program that the Administrator determines meets the requirements of subsection (a)(1) of this section, the Administrator shall notify such State, and within thirty months after the date of enactment of the Clean Water Act Amendments of 1985, after consultation with appropriate Federal and State agencies and other interested persons, carry out the requirements of subsections (a)(1) (A) and (B) of this section for such State. Upon completion of this requirement, the Administrator shall report to Congress on his actions pursuant to this section.

"(d)(1) The Administrator shall award grants, subject to such terms and conditions as the Administrator considers appropriate, to assist States in the implementation of management programs which have been approved pursuant to subsection (b) of this section. Such grants shall not exceed 75 per centum of the costs of implementing the program in any fiscal year and shall be made on condition that non-Federal sources provide at least 25 per centum of the costs that receive funding under this subsection.

"(2)(A) Two-thirds of the funds appropriated in any fiscal year for grants under this section shall be made available for allotment to the several States in accordance with the following table:

State	*Percentage allotment*
Alabama	1.56
Alaska	.50
Arizona	1.95
Arkansas	1.43
California	6.37
Colorado	2.19
Connecticut	.68
Delaware	.50
District of Columbia	.50
Florida	2.66
Georgia	2.04
Hawaii	.50
Idaho	1.20
Illinois	4.03
Indiana	2.07
Iowa	2.39
Kansas	2.78
Kentucky	1.32
Louisiana	1.56
Maine	.55
Maryland	1.03
Massachusetts	1.25
Michigan	2.67
Minnesota	2.43
Mississippi	1.40
Missouri	2.44
Montana	2.46
Nebraska	2.26
Nevada	1.78
New Hampshire	.50
New Jersey	1.62
New Mexico	1.93
New York	4.22
North Carolina	1.90
North Dakota	2.14
Ohio	3.14
Oklahoma	2.05
Oregon	1.75
Pennsylvania	2.97
Rhode Island	.50
South Carolina	1.09
South Dakota	1.94
Tennessee	1.50
Texas	8.08
Utah	1.36
Vermont	.50
Virginia	1.60
Washington	1.58
West Virginia	.60
Wisconsin	1.90
Wyoming	1.39
Guam	.10
Northern Marianas	.10
Pacific Trust Territories	.10
Puerto Rico	.72
Samoa	.10
Virgin Islands	.10
Total	100.00

"(B) One-third of the funds appropriated in any fiscal year for grants under this section shall be made available to the Administrator who shall make grants in response to applications from States if the Administrator determines such grants are necessary and appropriate to assist such States in—

"(i) controlling particularly difficult or serious nonpoint source pollution problems, including, but not limited to, problems resulting from mining activities;

"(ii) implementing innovative methods or practices for controlling nonpoint sources of pollution, including both regulatory or nonregulatory programs where the Administrator deems appropriate;

"(iii) controlling interstate nonpoint source pollution problems;

"(iv) assessing the relationship between nonpoint source pollution and ground water contamination; or

"(v) providing financial assistance for implementation by an Indian tribe, within the reservation, of an approved management program: *Provided*, That any such Indian tribe shall be subject to all terms and conditions of this section applying to a State. Financial assistance to any one reservation under this clause shall not exceed one-third of 1 per centum of the total amount appropriated for grants for each year.

"(3) The funds allotted to the States pursuant to paragraph (2)(A) of this subsection for a fiscal year shall remain available for obligation for the fiscal year for which appropriated. The amount of any such allotments not obligated by the end of such fiscal year and any unobligated funds remaining under paragraph (2)(B) of this subsection shall be reallotted by the Administrator for the next fiscal year on the basis of the table in paragraph (2)(A).

"(4) States may use funds from grants made pursuant to this section for financial assistance to persons only to the extent that such assistance is related to the costs of demonstration projects.

"(5) No grant shall be made to a State under this section unless the Administrator determines, on the basis of information provided by the State and from other relevant sources, that the State is implementing the program satisfactorily in terms of the requirements and objectives of this section.

"(6) No grant shall be made under this section to any State in any fiscal year in which the expenditure of non-Federal funds by such State for purposes comparable to the activities assisted by this section are less than the average level of such expenditures in the two fiscal years of such State next preceding the date of enactment of the Clean Water Act Amendments of 1985.

"(7) The Administrator may request such information, data, and reports as he may deem necessary to make the determination of continuing eligibility for grants under this section.

"(8) For the purpose of this section, there are authorized to be appropriated, to remain available until expended, $70,000,000 for the fiscal year ending September 30, 1986, $100,000,000 for the fiscal year ending September 30, 1987, and $130,000,000 for the fiscal year ending September 30, 1988.

"(e) Each State shall report to the Administrator on an annual basis concerning (1) its progress in meeting the schedule of milestones submitted pursuant to subsection (a)(1)(E) of this section, and (2) to the extent that appropriate information is available, reductions in nonpoint source pollutant loading and improvements in water quality resulting from implementation of the management program.

"(f) The Administrator shall—

"(1) transmit to the Office of Management and Budget and the appropriate Federal departments and agencies a list of those assistance programs and development projects identified by each State under subsection (a)(1)(G) for which individual assistance applications and projects will be reviewed pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983. Beginning not later than sixty days after receiving notification by the Administrator, each Federal department and agency shall modify existing regulations to allow States to review individual development projects and assistance applications under the identified Federal assistance programs and shall accommodate, according to the requirements and definitions of Executive Order 12372, as in effect on September 17, 1983, the concerns of the State regarding the consistency of such applications or projects with the State nonpoint source pollution management program;

"(2) collect and make available, through publications and other appropriate means, information pertaining to management practices and implementation methods, including, but not limited to, (A) information concerning the costs and relative efficiencies of best management practices for reducing nonpoint source pollution; and (B) available data concerning the relationship between water quality and implementation of various management practices to control nonpoint sources of pollution; and

"(3) submit to the Congress, within thirty-six months of enactment of the Clean Water Act Amendments of 1985, a report which on the basis of information submitted by the States pursuant to subsections (a) and (e) of this section, and other information as appropriate:

"(A) describes the management programs being implemented by the States by types and amount of affected waters, categories and subcategories of nonpoint sources, and types of best management practices being implemented;

"(B) describes the experiences of the States in adhering to schedules and implementing best management practices;

"(C) describes the amount and purpose of grants awarded pursuant to subsection (d) of this section;

"(D) identifies, to the extent that information is available, the progress made in reducing pollutant loads and improving water quality in the waters of the United States; and

"(E) indicates what further actions need to be taken to attain and maintain in those waters (i) applicable water quality standards and (ii) the goals and requirements of the Act.".

(b) Section 304(k)(1) of the Clean Water Act is amended by inserting after the word "Act" the following: "and nonpoint source pollution management programs approved under section 319 of this Act.".

(c) Section 205(j) of the Clean Water Act is amended by adding the following new paragraph:

"(5) In addition to the sums reserved under paragraph (1), the Administrator shall reserve each fiscal year for each State 1 per centum of the sums allotted and available for obligation to such State under this section for each fiscal year beginning on or after October 1, 1986, or $100,000, whichever is greater, for the purpose of carrying out section 319 of this Act. Sums so reserved in a State in any fiscal year for which such State does not request the use of such sums, to the extent such sums exceed $100,000, may be used by such State for other purposes under this title.".

NATIONAL ESTUARY PROGRAM

SEC. 113. Title III of the Clean Water Act is amended by adding at the end thereof the following new section:

"NATIONAL ESTUARY PROGRAM

"SEC. 320. (a)(1) Whenever the Administrator determines that the attainment and maintenance of the chemical, physical, and biological integrity of an estuary requires the interstate or international control of sources of pollution to supplement existing controls, the Administrator shall convene, for a period not to exceed five years, an estuarine management conference, to—

"(A) assess trends in water quality, natural resources, and uses of the estuary;

"(B) collect, characterize, and assess data on toxics, nutrients, and natural resources within the estuarine zone to identify the causes of environmental problems;

"(C) develop the relationship between the inplace loads and point and nonpoint loadings of pollutants to the estuarine zone and the potential uses of the zone, water quality, and natural resources;

"(D) develop a comprehensive conservation and management plan that recommends priority corrective actions and compliance schedules addressing point and nonpoint sources of pollution to restore and maintain the chemical, physical, and biological integrity of the estuary, including restoration and maintenance of water quality, a balanced indigenous population of shellfish, fish and wildlife, and recreational activities in the estuary, and assure that the designated uses of the estuary are protected;

"(E) develop plans for the coordinated implementation of the plan by the States as well as Federal and local agencies participating in the conference;

"(F) monitor the effectiveness of actions taken pursuant to the plan; and

"(G) review any Federal financial assistance program or federal development project subject to the requirements of Executive Order 12372, as in effect on September 17, 1983, to determine whether such assistance program or project would be consistent with and further the purposes and objectives of any plan prepared under this section. For purposes of this subparagraph, these programs and projects shall not be limited to the assistance programs or development projects subject to Executive Order 12372, but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of any plan developed pursuant to this section.

"(b) The members of a management conference convened under this section shall include, at a minimum, the Administrator and representatives of—

"(1) each State and foreign nation located in whole or in part in the estuarine zone of the estuary for which the conference is convened;

"(2) international, interstate, or regional agencies having jurisdiction over all or a significant part of the estuary;

"(3) each interested Federal agency, as determined appropriate by the Administrator;

"(4) local governments within the estuarine zone, as determined appropriate by the Administrator; and

"(5) affected industries, public and private educational institutions and the general public in the estuarine zone.

"(c) Prior to developing a comprehensive conservation and management plan under this section, the management conferees shall survey and use existing reports, data, and studies as well as local master or regional plans relating to the estuary that have been developed by or made available to Federal, interstate, international, State, or local agencies.

"(d)(1) Not later than ninety days after the completion of a conservation and management plan, the Administrator shall, if the plan satisfies the purposes of this section and the affected Governor or Governors concur, approve such plan.

"(2) Upon approval of a conservation and management plan under this section, funds authorized to be appropriated under titles II and VI and section 319 of this Act may be used in accordance with the applicable requirements of this Act, to assist States with the implementation of such plan.

"(e) There are authorized to be appropriated to the Administrator not to exceed $12,000,000 per fiscal year for each of the fiscal years 1986, 1987, 1968, and 1989, for:

"(1) expenses related to the administration of management conferences under this section, not to exceed 10 per centum of the amount appropriated under this paragraph;

"(2) grants to State, interstate or regional water pollution control agencies for research, surveys, studies, monitoring, modeling, and other technical work necessary for the development of a conservation and management plan under this section: *Provided*, That such grants shall not exceed 75 per centum of the costs of such technical work and shall be made on condition that non-Federal sources provide at least 25 per centum of the costs that receive funding under this paragraph; and

"(3) the costs of monitoring the implementation of a conservation and management plan. Such monitoring shall be done by the management conference or, in any case in which the conference has expired or been terminated, by the Administrator.

The Administrator shall provide up to $5,000,000 per fiscal year of the sums authorized to be appropriated under this subsection to the Administrator of the National Oceanic and Atmospheric Administration to carry out tasks assigned under subsection (g).

"(f) Any State, interstate, or regional agency that receives a grant under subsection (e) shall report to the Administrator not later than eighteen months after receipt of such grant and biennially thereafter on the progress being made under this section.

"(g)(1) In order to determine the need to convene a management conference under this section or at the request of such a management conference, the Administrator shall coordinate and implement, through the National Marine Pollution Program Office and the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, as appropriate, for one or more estuarine zones—

"(A) a long-term program of trend assessment monitoring measuring variations in pollutant concentrations, marine ecology, and other physical or biological environmental parameter which may affect estuarine zones, to provide the Administrator the capacity to determine the potential and actual effects of alternative management strategies and measures;

"(B) a program of ecosystem assessment

assisting in the development of (i) baseline studies which determine the state of estuarine zones and the effects of natural and anthropogenic changes, and (ii) predictive models capable of translating information on specific discharges or general pollutant loadings within estuarine zones into a set of probable effects on such zones;

"(C) a comprehensive water quality sampling program for the continuous monitoring of nutrients, chlorine, acid precipitation dissolved oxygen, and potentially toxic pollutants (including organic chemicals and metals) in estuarine zones, after consultation with interested State, local, interstate, or international agencies and review and analysis of all environmental sampling data presently collected from estuarine zones; and

"(D) a program of research to identify the movements of nutrients, sediments and pollutants through estuarine zones and the impact of nutrients, sediments, and pollutants on water quality, the ecosystem, and designated or potential uses of the estuarine zones.

"(2) The Administrator, in cooperation with the Administrator of the National Oceanic and Atmospheric Administration, shall submit to the Congress no less often than biennially a comprehensive report on the activities authorized under this subsection including—

"(A) a listing of priority monitoring and research needs;

"(B) an assessment of the state and health of the Nation's estuarine zones, to the extent evaluated under this subsection;

"(C) a discussion of pollution problems and trends in pollutant concentrations with a direct or indirect effect on water quality, the ecosystem, and designated or potential uses of each estuarine zone, to the extent evaluated under this subsection; and

"(D) an evaluation of pollution abatement activities and management measures so far implemented to determine the degree of improvement toward the objectives expressed in subsection (a)(1)(D) of this section.

"(h) For the purposes of this section, the terms 'estuary' and 'estuarine zone' shall have the same meanings such terms have in section 104(n)(4) of this Act, except that the term 'estuarine zone' shall include those portions of tributaries draining into the estuary up to the historic height of migration of anadromous fish or the historic head of tidal influence, whichever is higher.".

STORMWATER RUNOFF FROM OIL AND GAS OPERATIONS

Sec. 114. Section 402(l) of the Clean Water Act is amended by inserting "(1)" after "(l)" and by adding the following new paragraph:

"(2) The Administrator shall not require a permit under this section nor impose effluent limitations, nor shall the Administrator directly or indirectly require any State to require such a permit or impose such limitations, for discharges of stormwater runoff from oil or gas exploration, production, processing, or treatment operations (including transmission pumping stations), composed entirely of flows from conveyances or systems of conveyances (including pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and not contaminated with process wastes, toxic pollutants, hazardous substances in excess of reportable quantities, or oil or grease in excess of reportable quantities."

ANTI-BACKSLIDING

Sec. 115. (a) Section 402 of the Clean Water Act is amended by adding the following new subsection:

"(n) In the case of effluent limitations established on the basis of subsection (a)(1)(B) of this section, a permit may not be renewed, reissued or modified solely on the basis of effluent guidelines promulgated under section 304(b) subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit. If the source has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, the limitations in the renewed, reissued or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance or modification). In the case of effluent limitations established on the basis of section 301(b)(1)(C) or section 303 (d) or (e), a permit may be renewed, reissued, or modified on the basis of subsequently revised waste load allocations under section 303(d) to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit only in compliance with section 303(d)(5).".

(b) Section 402(a)(1) of the Clean Water Act is amended by inserting "(A)" after "either" and by inserting "(B)" after "this Act, or".

(c) Section 303(d) of the Clean Water Act is amended by adding the following new paragraph:

"(5)(A) For waters identified in paragraph (1)(A) where the applicable water quality standard has not yet been attained, any effluent limitation based on a total maximum daily load or other waste load allocation established under this section may be revised only if (i) the cumulative effect of all such revised effluent limitations based on such total maximum daily load or waste load allocation will assure the attainment of such water quality standard, or (ii) the designated use which is not being attained is removed in accordance with regulations established under this section.

"(B) For waters identified in paragraph (1)(A) where the quality of such waters equals or exceeds levels necessary to protect the designated use for such waters, any effluent limitation based on a total maximum daily load or other waste load allocation established under this section, or other permitting standard, may be revised only if such revision is subject to and consistent with the antidegradation policy established under this section.".

STORMWATER DISCHARGES

Sec. 116. (a) Section 402 of the Clean Water Act is amended by adding the following new subsection:

"(o)(1) Following the date of enactment of the Clean Water Act Amendments of 1985 and prior to October 1, 1992, the Administrator or the State (in the case of a State with a permit program approved under section 402 of this Act) shall not require a permit under this section for discharges composed entirely of stormwater, other than (A) those associated with industrial activity or a municipal separate storm sewer, or (B) those for which the Administrator or the State determines that the stormwater discharge violates a water quality standard or is a significant contributor of pollutants to waters of the United States.

(2) Prior to October 1, 1988, the Administrator, in consultation with States with a permit program approved under section 402 of this Act, shall submit to the Congress the report of a study (i) to identify stormwater discharges or classes of stormwater discharges for which permits were not required pursuant to paragraph (1) of this subsection, and (ii) to determine, to the maximum extent practicable, the nature and extent of pollutants in such discharges. Prior to October 1, 1989, the Administrator, in consultation with States with a permit program approved pursuant to section 402 of this Act, shall submit to the Congress the report of a study setting forth procedures and methods to control stormwater discharges to the extent necessary to attain and maintain water quality standards.

SEWAGE SLUDGE

SEC. 117. (a) Section 405(d) of the Clean Water Act is amended by inserting "(1)" after "(d)", by striking "(1)", "(2)" and "(3)" and inserting in lieu thereof "(A)", "(B)" and "(C)", and by adding the following new paragraphs:

"(2)(A)(i) Not later than April 1, 1986, the Administrator shall identify those toxic pollutants which, on the basis of available information on their toxicity, persistence, concentration, mobility, or potential for exposure, may be present in sewage sludge in concentrations which may adversely affect public health or the environment, and propose regulations specifying acceptable management practices for sewage sludge containing each such toxic pollutant and establishing numerical limitations for each such pollutant for each use identified under paragraph (1)(A).

"(ii) Not later than March 1, 1987, and after opportunity for public hearing, the Administrator shall promulgate the regulations required by subparagraph (A)(i).

"(B)(i) Not later than February 1, 1987, the Administrator shall identify those toxic pollutants not identified under subparagraph (A)(i) which may be present in sewage sludge in concentrations which may adversely affect public health or the environment, and propose regulations specifying acceptable management practices for sewage sludge containing each such toxic pollutant and establishing numerical limitations for each pollutant for each such use identified under paragraph (1)(A).

"(ii) Not later than December 15, 1987, the Administrator shall promulgate the regulations required by subparagraph (B)(i).

"(C) The management practices and numerical criteria established under subparagraphs (A) and (B) shall be adequate to protect public health and the environment from any reasonably anticipated adverse effects of each pollutant. Such regulations shall require compliance no later than twelve months after their publication, unless such regulations require the construction of new pollution control technology, in which case the regulations shall require compliance as expeditiously as practicable but in no case later than two years from the date of their publication.

"(D) For purposes of this subparagraph, if, in the judgment of the Administrator, it is not feasible to prescribe or enforce a numerical limitation for a pollutant identified under this paragraph, the Administrator may instead promulgate a design, equipment, management practice, or operational standard, or combination thereof, which in the judgment of the Administrator is adequate to protect public health and the environment from any reasonably anticipated adverse effects of such pollutant.

"(E) Prior to the promulgation of the regulations required by subparagraphs (A) and (B), the Administrator shall impose conditions in permits issued to publicly owned treatment works under section 402 of this Act or take such other measures as the Administrator deems appropriate to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge.

"(F) Nothing in this section authorizes the establishment of any requirement or time for compliance which is less stringent than required by any other law.".

(b) Section 405(e) of the Clean Water Act is amended to read as follows:

"(e) The determination of the manner of disposal or use of sludge is a local determination, except that it shall be unlawful for any person to dispose of sludge from a publicly owned treatment works or any other treatment works treating primarily domestic sewage (but not including privately owned treatment works operated in conjunction with industrial manufacturing and processing facilities) for any use for which regulations have been established pursuant to subsection (d) of this section, except in accordance with such regulations.".

(c) Section 405 of the Clean Water Act is further amended by adding at the end thereof the following:

"(f)(1) Any permit issued under section 402 of this Act to a publicly owned treatment works or any other treatment works treating primarily domestic sewage (but not including privately owned treatment works operated in conjunction with industrial manufacturing and processing facilities) shall include requirements for the use and disposal of sludge that implement the regulations established pursuant to subsection (d) of this section, unless such requirements have been included in a permit issued under the appropriate provisions of subtitle C of the Solid Waste Disposal Act, part C of the Safe Drinking Water Act, the Marine Protection, Research and Sanctuaries Act of 1972, or the Clean Air Act, or under State permit programs approved by the Administrator, where the Administrator determines that such programs assure compliance with any applicable requirements of this section. Not later than December 15, 1985, the Administrator shall promulgate procedures for approval of State programs pursuant to this paragraph.

"(2) In the case of a treatment works described in paragraph (1) that is not subject to section 402 of this Act and to which none of the other above listed permit programs nor approved State permit authority apply, the Administrator may issue a permit to such treatment works solely to impose requirements for the use and disposal of sludge that implement the regulations established pursuant to subsection (d) of this section. The Administrator shall include in the permit appropriate requirements to assure compliance with the regulations established pursuant to subsection (d) of this section. The Administrator shall establish procedures for issuing permits pursuant to this paragraph.".

(d)(1) Section 308(a)(4) of the Clean Water Act is amended by inserting "405," before the phrase "and 504".

(2) Section 505(f) of the Clean Water Act is amended by striking "or" where it appears before "(6)", and inserting before the period a semicolon and the following: "or (7) a regulation under section 405(d) of this Act,".

(3) Section 509(b)(1)(E) of the Clean Water Act is amended by striking "or 306" and inserting in lieu thereof "306, or 405".

INTERSTATE DISPUTE RESOLUTION

Sec. 118. (a) Section 402(d)(2) of the Clean Water Act is amended by inserting "(A)" after "(2)", by striking "(A)" and "(B)" and inserting in lieu thereof "(i)" and "(ii)" respectively, and by adding the following subparagraph:

"(B) In the case of the failure of any State to accept the recommendations of another State whose waters may be affected by the issuance of a permit, submitted in accordance with subsection (b)(5), the Administrator shall determine within 90 days following written objection to the Administrator by the State whose recommendations were not accepted, whether any substantial violation of a water quality requirement (including any standard) of the affected State or adverse effect on public health of the affected State will result from the issuance of such permit. If the Administrator so determines, the Administrator shall object to the issuance of such permit or provide specific modifications to such permit. Any such determination shall be provided in writing to the affected State and such determination or such objection shall be reviewable in the appropriate Circuit Court of Appeals under section 509(b) of this Act as the issuance or denial of a permit under section 402.".

(b) Section 402(b)(1) of the Clean Water Act is amended by adding the following:

"(E) shall be reconsidered for termination or modification at any time a State other than that in which the source is located provides notice that the permitted discharge is causing a substantial violation of a water quality requirement (including any standard) of such State or adversely affecting the public health of such State and seeks a modification of such permit;".

(c) Section 511 of the Clean Water Act is amended by adding a new subsection (e) as follows:

"(e) Any State or municipality the water quality of which is adversely affected by pollutants from another State may petition the Administrator who, upon determining on the record after opportunity for Agency hearing pursuant to 5 U.S.C. 554, 556, and 557 that such pollution is causing a substantial violation of a water quality requirement (including any standard) of such State or adversely affecting the public health of such State, shall issue an order within 90 days restraining any person causing or contributing to such pollution or providing such other relief as is appropriate, taking into account the goals and requirements of this Act and other equitable considerations. In no case shall such order or other relief based solely on this subsection supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws. This subsection shall not apply in any case in which section 402(d)(2)(B) or section 402(b)(1)(F) is available, nor shall this subsection or section 402(d)(2)(B) or section 402(b)(1)(E) apply to any pollution which is subject to the Colorado River Basin Salinity Control Act, nor to any water pollution which results from emissions from mobile or stationary sources which are regulated under the Clean Air Act.".

PRESERVATION OF OTHER RIGHTS

Sec. 119. (a) Section 505(e) of the Clean Water Act is amended by inserting "(1)" after "(e)" and by adding the following new paragraphs:

"(2) Nothing in this Act shall affect or modify in any way the liabilities of any person under other Federal statutes for damages caused by noncompliance with any requirement of this Act or any permit issued under this Act.

"(3) In any case involving the application of State common or statutory law to an instance where a discharge of pollutants arising in another State is alleged to have an adverse effect on the public health or welfare or the attainment of any water quality requirement of such State or municipality, a State or municipality shall be considered a citizen of such State for the purpose of filing an action in, or seeking removal to, a Federal district court to section 1332 of title 28, United States Code.".

(b) The amendments made by this section shall not apply in any dispute involving claims of interstate water pollution, wherein a State or municipality is the defending party, which is pending as of the enactment of this Act (or has been finally adjudicated), and on which the Supreme Court of the United States has rendered a decision.

AD VALOREM TAX DEDICATION

Sec. 120. For the purposes of complying with section 204(b)(1) of the Clean Water Act, the ad valorem tax user charge system of the Town of Hampton, New Hampshire, shall be deemed to have been dedicated as of December 27, 1977. The Administrator of the Environmental Protection Agency shall review such ad valorem tax user charge system for compliance with the remaining requirements of section 204(b)(1) and related regulations of the Agency.

LIMITATION ON DISCHARGE OF RAW SEWAGE BY NEW YORK CITY

Sec. 121. (a)(1) If the wastewater treatment plant identified in the consent decree as the North River plant has not achieved advanced preliminary treatment as required under the terms of the consent decree by August 1, 1986, the city of New York shall not discharge raw sewage from the drainage area of such plant (as defined in the consent decree) into navigable waters after such date in an amount which is greater for any thirty-day period than an amount equal to thirty times the average daily amount of raw sewage discharged from such drainage area during the twelve-month period ending on the earlier of the date on which such plant becomes operational or March 15, 1986 (as determined by the Administrator of the Environmental Protection Agency), except as provided in subsection (b).

(2) If the wastewater treatment plant identified in the consent decree as the Red Hook plant has not achieved advanced preliminary treatment as required under the terms of the consent decree by August 1, 1987, the city of New York shall not discharge raw sewage from the drainage area of such plant (as defined in the consent decree) into navigable waters after such date in an amount which is greater for any thirty-day period than an amount equal to thirty times the average daily amount of raw sewage discharged from such drainage area during the twelve-month period ending on the earlier of the date on which such plant becomes operational or March 15, 1987 (as determined by the Administrator of the Environmental Protection Agency), except as provided in subsection (b).

(b)(1) In the event of any significant interruption in the operation of the North River plant or the Red Hook plant caused by an event described in subparagraph (A), (B), or (C) of paragraph (5) occurring after the applicable deadline established under subsection (a), the Administrator of the Environmental Protection Agency shall waive the limitation of subsection (a) with respect to such plant, but only to such extent and for such limited period of time as may be reasonably necessary for the city of New York to resume operation of such plant.

(2) In the event that the volume of precipitation occurring after the applicable deadline established under subsection (a) causes the discharge of raw sewage to exceed the limitation under subsection (a), the Administrator of the Environmental Protection Agency shall waive the limitation of subsection (a) with respect to either or both such plants, but only to such extent and for such limited period of time as the Administrator determines to be necessary to take into account the increased discharge caused by such volume of precipitation.

(3) In the event that an increase in discharges from the North River drainage area constituting a violation of subsection (a)(1) is due to a random or seasonal variation, and that any sewer hookup occurring, or permit for a sewer hookup granted, after July 31, 1986, is not responsible for such violation, the Administrator of the Environmental Protection Agency shall waive the limitation of subsection (a)(1), but only to such extent and for such limited period of time as the Administrator determines to be reasonably necessary to take into account such random or seasonal variation.

(4) In the event that an increase in discharges from the Red Hook drainage area constituting a violation of subsection (a)(2) is due to a random or seasonal variation, and that any sewer hookup occurring, or permit for a sewer hookup granted, after July 31, 1987, is not responsible for such violation, the Administrator of the Environmental Protection Agency shall waive the limitation of subsection (a)(2), but only to such extent and for such limited period of time as the Administrator determines to be reasonably necessary to take into account such random or seasonal variation.

(5) The Administrator of the Environmental Protection Agency shall extend either deadline under paragraph (1) or (2) of subsection (a) to such extent and for such limited period of time as may be reasonably required to take into account any—

(A) act of war,

(B) unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight, or

(C) other circumstances beyond the control of the city of New York, such circumstances not to include (i) the unavailability of Federal funds under section 201 of the Federal Water Pollution Control Act, (ii) the unavailability of funds from the city of New York or the State of New York, or (iii) a policy decision made by the city of New York or the State of New York to delay the achievement of advanced preliminary treatment at the North River plant or Red Hook plant beyond the applicable deadline in subsection (a).

(c) Except as otherwise provided in subsection (b), any violation of subsection (a) shall be considered to be a violation of section 301 of the Federal Water Pollution Control Act, and all provisions of such Act relating to violations of such section 301 shall apply.

(d) For purposes of this section, the "consent decree" is the consent decree entered into by the Environmental Protection Agency, the city of New York, and the State of New York, on December 30, 1982, relating to construction and operation of the North River and Red Hook wastewater treatment plants.

(e) The Administrator of the Environmental Protection Agency shall work with the city of New York to eliminate the discharge of raw sewage by such city at the earliest practicable date.

(f) Nothing in this section shall be construed as modifying the terms of the consent decree.

(g) It is the sense of the Congress that the Administrator of the Environmental Protection Agency should not agree to any further modification of the consent decree with respect to the schedule for achieving advanced preliminary treatment.

(h)(1) The provisions of this section shall remain in effect with respect to the North River drainage area until such time as the North River plant has achieved advanced preliminary treatment (as defined in the consent decree) for a period of six consecutive months.

(2) The provisions of this section shall remain in effect with respect to the Red Hook drainage area until such time as the Red Hook plant has achieved advanced preliminary treatment (as defined in the consent decree) for a period of six consecutive months.

(i) The Administrator of the Environmental Protection Agency shall promptly establish and carry out a program for the monitoring activities which may be required under subsection (a). The Administrator of the Environmental Protection Agency shall establish the methodologies, data base, and any other information required for making determinations under subsection (b) for the North River drainage area (as defined in the consent decree) by July 31, 1986, unless the requirements of subsection (h)(1) have been satisfied, and for the Red Hook drainage area (as defined by the consent decree) by July 31, 1987, unless the requirements of subsection (h)(2) have been satisfied. In carrying out such program, if the Administrator finds that a violation of subsection (a) has occurred, the Administrator shall also determine, within thirty days after such finding, whether a provision of subsection (b) applies. If the Administrator requires information from the city of New York in order to determine whether a provision of subsection (b) applies, the Administrator shall request such information. If the city of New York does not supply the information requested by the Administrator, the Administrator shall determine that subsection (b) does not apply. The city of New York shall be responsible only for such expenses as are necessary to provide such requested information. Enforcement action pursuant to subsection (c) shall be commenced at the end of such thirty days unless a provision of subsection (b) applies.

CHESAPEAKE BAY

SEC. 122. Title I of the Clean Water Act is amended by adding at the end thereof the following new section:

"CHESAPEAKE BAY

"Sec. 117. (a) The Administrator shall continue the Chesapeake Bay Program and shall establish and maintain in the Environmental Protection Agency an Office, Division, or Branch of Chesapeake Bay Programs to—

"(1) collect and make available through publications and other appropriate means, the results of and other information pertaining to research and other activities that address the environmental quality of the Chesapeake Bay (hereinafter 'the Bay');

"(2) coordinate all Federal research projects pertaining to the Bay;

"(3) conduct research to determine the impact of sediment deposition in the Bay and to identify the sources, rates, routes, and distribution patterns of such sediment deposition; and

"(4) conduct research on the impact of natural and man-induced environmental changes on the living resources of the Bay and the relationships between such changes. Particular emphasis shall be placed on researching the impact of pollutant loadings of nutrients, chlorine, acid precipitation, dissolved oxygen, and toxic pollutants, including organic chemicals and heavy metals. Special attention shall be given to the impact of such changes on the striped bass.

"(b)(1) The Administrator shall, at the request of the Governor of a State affected by the interstate management plan developed pursuant to the Chesapeake Bay Program (hereinafter 'the plan'), make a grant for the purpose of implementing the management mechanisms contained in the plan if such State has, within one year after the date of enactment of the Clean Water Act Amendments of 1985, approved and committed to implement all or substantially all aspects of the plan. Payments for such purpose may be made to the States as hereinafter provided, subject to such terms and conditions as the Administrator considers appropriate.

"(2) A State or combination of States may elect to avail itself of the benefits of this subsection by submitting to the Administrator a comprehensive proposal to implement management mechanisms contained in the plan which shall include (A) a description of proposed abatement actions which the State commits to take within a specified time period to reduce pollution in the Bay and to meet applicable water quality standards, and (B) the estimated cost of the abatement actions proposed to be taken during the next fiscal year. If the Administrator finds that such proposal is consistent with the national policies set forth in section 101(a) of this Act and will contribute to the achievement of the national goals set forth in section 101(a) of this Act he shall approve such proposal and shall finance the costs of implementing segments of such proposal; except that Federal grants under this subsection shall not exceed 55 per centum of the costs of implementing the plan in any fiscal year and shall be made on condition that non-Federal sources provide the remainder of the cost of implementing the plan during such fiscal year.

"(3) Administrative costs in the form of salaries, overhead or indirect costs for services provided and charged against programs or projects supported by funds made available under this subsection shall not exceed in any one fiscal year 10 per centum of the annual Federal grant made to a State under this subsection.

"(c) Any State or combination of States that receives a grant under subsection (b) shall, within eighteen months after the date of receipt of a Federal grant under subsection (b) and biennially thereafter, report in conjunction with the Administrator to the Congress on progress made in implementing the interstate management plan developed pursuant to the Chesapeake Bay Program.

"(d) There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purposes of this section:

"(1) $3,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1988, to carry out subsection (a); and

"(2) $10,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1988, to carry out subsection (b).".

GREAT LAKES

Sec. 123(a). Title I of the Clean Water Act is further amended by adding the following new section:

"GREAT LAKES

"Sec. 118. (a) Definitions.—For the purposes of this section, the term—

"(1) 'Agency' means the Environmental Protection Agency;

"(2) 'Great Lakes' means Lake Ontario, Lake Erie, Lake Huron (including Lake St. Clair), Lake Michigan, and Lake Superior, and the connecting channels (Saint Mary's River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian Border);

"(3) 'Great Lakes System' means all the streams, rivers, lakes, and other bodies of water within the drainage basin of the Great Lakes;

"(4) 'Program Office' means the Great Lakes National Progam Office established by this section; and

"(5) 'Research Office' means the Great Lakes Research Office established by subsection (d).

"(b) Great Lakes National Program Office.—The Great Lakes National Program Office (previously established by the Administrator) is hereby established within the Agency. The Program Office shall be headed by a Director who, by reason of management experience and technical expertise relating to the Great Lakes, is highly qualified to direct the development of programs and plans on a variety of Great Lakes issues. The Great Lakes National Program Office shall be located in a Great Lakes State.

"(c) Great Lakes Management.—(1) The Program Office shall—

"(A) in cooperation with appropriate Federal, State, tribal, and international agencies, and in accordance with section 101(e) of this Act, develop and implement specific action plans to carry out the responsibilities of the United States under the Great Lake Water Quality Agreement of 1978;

"(B) establish a Great Lakes system-wide surveillance network to monitor the water quality of the Great Lakes, with specific emphasis on the monitoring of toxic pollutants; and

"(C) serve as the liaison with, and provide information to, the Canadian members of the International Joint Commission and the Canadian counterpart to the Agency.

"(2) The Program Office shall develop, in consultation with the states, a five-year plan and program for reducing the amount of nutrients introduced into the Great Lakes. Such program shall incorporate any management program for reducing nutrient runoff from nonpoint sources established under section 319 of this Act and shall include a program for monitoring nutrient runoff into, and ambient levels in, the Great Lakes.

"(3) The Program Office shall carry out a five year study and demonstration projects relating to the control and removal of toxic pollutants in the Great Lakes, with emphasis on the removal of toxic pollutants from bottom sediments.

"(4) To the extent practicable, the Agency's annual budget submission to Congress, shall include a funding request for the Program Office as a separate budget line item.

"(5) Within ninety days after the end of each fiscal year, the Administrator shall submit to the Congress a comprehensive report which—

"(A) describes the achievements in the preceding fiscal year in implementing the Great Lakes Water Quality Agreement of 1978 and shows by categories (including judicial enforcement, research, State cooperative efforts, and general administration) initiatives in such preceding fiscal year;

"(B) describes the progress made in such preceding fiscal year in implementing the system of surveillance of the water quality in the Great Lakes system, including the monitoring of groundwater and sediment, with particular reference to toxic pollutants;

"(C) describes the long-term prospects for improving the condition of the Great Lakes; and

"(D) provides a comprehensive assessment of the planned efforts to be pursued in the succeeding fiscal year for implementing the Great Lakes Water Quality Agreement of 1978. The assessment shall show by categories the amount anticipated to be expended on Great Lakes water quality initiatives in the fiscal year to which the assessment relates. The assessment shall also include a report of current programs administered by other Federal agencies which make available resources to the Great Lakes management efforts.

"(d) Great Lakes Research.—

"(1) There is established within the National Oceanic and Atmospheric Administration the Great Lakes Research Office.

"(2) the Research Office shall identify issues relating to the Great Lakes resources on which research is needed. The Research Office shall submit a report on such issues prior to the end of each fiscal year which shall identify any changes in the Great Lakes system with respect to such issues.

"(3) The Research Office shall identify and inventory Federal, State, university, and tribal environmental research programs, and to the extent feasible, those of private organization and other nations, relating to the Great Lakes system, and shall update that inventory every four years.

"(4) The Research Office shall establish a Great Lakes research exchange for the purpose of facilitating the rapid identification, acquisition, retrieval, dissemination, and use of information concerning research projects which are on-going or completed and which affect the Great Lakes System.

"(5) The Research Office shall develop, in cooperation with the Program Office, a comprehensive environmental research program and data base for the Great Lakes System. The data base shall include, but not be limited to, data relating to water quality, fisheries, and biota.

"(6) The Research Office shall conduct, through the Great Lakes Environmental Research Laboratory, the National Sea Grant College Program, and other Federal laborites, and the private sector, appropriate research and monitoring activities which address priority issues and current needs relating to the Great Lakes.

"(7) The Great Lakes Research Office shall be located in a Great Lakes State.

"(e) Research and Management Coordination.—

"(1) Prior to October 1 of each year, the Program Office and the Research Office shall prepare a joint research plan for the fiscal year which begins the following calendar year.

"(2) Each plan prepared under paragraph (1) shall—

"(A) identify all proposed research dedicated to activities conducted under the Great Lakes Water quality Agreement of 1978;

"(B) include the Agency's assessment of priorities for research needed to fulfill the terms of such agreement; and

"(C) identify all proposed research that may be used to develop a comprehensive environmental data base for the Great Lakes System and establish priorities for development of such data base.

"(f) Interagency Cooperation.—The head of each department, agency, or other instrumentality of the Federal Government which is engaged in, is concerned with, or has authority over programs relating to research, monitoring, and planning to maintain, enhance, preserve, or rehabilitate the environmental quality and natural resources of the Great Lakes, including the Chief of Engineers of the Army, the Chief of the Soil Conservation Service, the Commandant of the Coast Guard, the Director of the Fish and Wildlife Service, and the Administrator of the National Oceanic and Atmospheric Administration shall submit an annual report to the Administrator with respect to the activities of that agency or office affecting compliance with the Great Lakes Water Quality Agreement of 1978.

"(g) Relationship to Existing Federal and State Laws and International Treaties.—Nothing contained in this section shall be construed to affect the jurisdiction, powers, or prerogatives of any department, agency, or officer of the Federal Government or of any State government, or of any tribe, nor any powers, jurisdiction, or prerogatives of international bodies created by treaty with authority relating to the Great Lakes.

"(h) Authorizations of Great Lakes Appropriations.—There are authorized to be appropriated to carry out this section not to exceed $10,000,000 per fiscal year for the fiscal years 1986, 1987, 1988, 1989 and 1990. Of such amounts as are appropriated each fiscal year—

"(1) 50 per centum shall be used for the Great Lakes National Program Office demonstration projects on the feasibility of controlling and removing toxic pollutants;

"(2) 7 per centum shall be used for the Great Lakes National Program Office's program of nutrient monitoring; and

"(3) 30 per centum shall be used for the Great Lakes Research Offices.".

(b) Section 517 of the Clean Water Act is amended by inserting "118," immediately after "115".

CLEAN LAKES

Sec. 124. Section 314(a) of the Clean Water Act is amended to read as follows:

"(a)(1) Each State shall prepare a report on a biennial basis which shall include—

"(A) an identification and classification according to eutrophic condition of all publicly owned lakes in such State;

"(B) a list and description of those publicly owned lakes for which uses are known to be impaired, including those lakes which are known to not meet applicable water quality standards, or which require implementation of protection programs to maintain compliance with applicable standards; and

"(C) a description of the State programs and methods to control sources of pollution of lakes and protect the quality of lakes.

"(2) The report provided for in paragraph (1) shall be included in the report required under section 305(b) of this Act.

"(3) A State must submit a report in accord with paragraph (1) in order to receive a grant under this section.".

LAKE PEND OREILLE STUDY

Sec. 125. The Administrator shall conduct a comprehensive study of the causes of increasing pollution in Lake Pend Oreille and its tributaries. In such study, the Administrator shall attempt to identify any upstream or local permitted or other discharges and the source of such discharges. In conducting this study, the Administrator should take into account any previous studies that will assist in carrying out the provisions of this subsection, and report to Congress the findings and recommendations of the study.

CONSTRUCTION AND OPERATION OF LOG TRANSFER FACILITIES

Sec. 126. (a) Not later than October 12, 1985, the Administrator and the Secretary of the Army shall enter into an agreement to designate a lead agency and to process permits required under section 402 and section 404 of the Clean Water Act, where both such sections apply, for discharges associated with the construction and operation of log transfer facilities.

(b) The requirements of sections 301(a) and 402(a) of the Clean Water Act shall be stayed until October 12, 1985, or until an agreement is entered into under subsection (a), whichever is earlier, for discharges associated with such facilities, except discharges of dredged or fill material.

(c) Such agreement shall be developed to assure that, to the maximum extent practicable, duplication, needless paperwork and delay in the issuance of permits, and inequitable enforcement between and among facilities in different States, shall be eliminated.

(d) Where both sections 402 and 404 of that Act apply, log transfer facilities that have received a permit under section 404 of that Act prior to the date of enactment of this section shall not be required to submit a new application for a permit under section 402 of this Act. If the Administrator determines that the terms of an existing permit under section 404 of that Act satisfies the applicable requirements of sections 301, 302, 306, 307, 308, and 403 of that Act, a separate application for a permit under section 402 shall not be required. In any case where the Administrator demonstrates, after an opportunity for a hearing, that the terms of an existing permit under section 404 of that Act do not satisfy the applicable requirements of sections 301, 302, 306, 307, 308, and 403 of that Act, modifications to the existing permit under section 404 of that Act to incorporate such applicable requirements shall be issued by the Administrator as an alternative to issuance of a separate new permit under section 402 of that Act.

(e) For the purpose of this section, the term "log transfer facility" means a facility which is constructed in whole or in part in waters of the United States, and which is utilized for the purpose of transferring commercially harvested logs to or from a vessel or log raft, including the formation of a log raft.

TITLE II—CONSTRUCTION GRANT AMENDMENTS

CONSTRUCTION GRANT AUTHORIZATION

Sec. 201. (a) Section 207 of the Clean Water Act is amended by striking out the period at the end thereof and adding the following: "; and to carry out this title, other than sections 206(e), 208, and 209, subject to such amounts as are provided in appropriation Acts, for each of the fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1988, not to exceed $2,400,000,000; and for each of the fiscal years ending September 30, 1989, and September 30, 1990, not to exceed $1,200,000,000.".

(b) Section 205(e) of the Clean Water Act is amended by striking, ", 1979, 1980, 1981, 1982, 1983, 1984, and 1985" in the first and second sentences and inserting in each place in lieu thereof "through 1994".

ALLOCATION

Sec. 202. Section 205(c) of the Clean Water Act is amended by adding the following new paragraphs:

"(3) Sums authorized to be appropriated pursuant to section 207 for the fiscal years 1986, 1987, and 1988 shall be allotted for each such year by the Administrator not later than the tenth day which begins after the date of enactment of the Clean Water Act Amendments of 1985. Sums authorized for such fiscal years shall be allotted in accordance with the following table:

States:

Alabama	.012442
Alaska	.007321
Arizona	.012442
Arkansas	.008002
California	.061966
Colorado	.009785
Connecticut	.012442
Delaware	.005801
District of Columbia	.005958
Florida	.044973
Georgia	.014649
Hawaii	.007440
Idaho	.005958
Illinois	.039186
Indiana	.020881
Iowa	.012614
Kansas	.011041
Kentucky	.014975
Louisiana	.014314
Maine	.009346
Maryland	.020955
Massachusetts	.036028
Michigan	.037255
Minnesota	.015925
Mississippi	.012442
Missouri	.025305
Montana	.005411
Nebraska	.006257
Nevada	.005958
New Hampshire	.012442
New Jersey	.048642
New Mexico	.005958
New York	.096132
North Carolina	.016094
North Dakota	.004558
Ohio	.048776
Oklahoma	.009882

Oregon	.011794
Pennsylvania	.034320
Rhode Island	.007428
South Carolina	.013337
South Dakota	.005958
Tennessee	.016597
Texas	.053634
Utah	.006445
Vermont	.005958
Virginia	.017732
Washington	.028533
West Virginia	.013507
Wisconsin	.023423
Wyoming	.005359
America Samoa	.000778
Guam	.000564
Northern Marianas	.000531
Puerto Rico	.012582
Pacific Trust Territories	.001403
Virgin Islands	.000462

"(4) Sums authorized to be appropriated pursuant to section 207 for the fiscal years 1989 and 1990 shall be allotted for each such year by the Administrator not later than the tenth day which begins after the date of enactment of the Clean Water Act Amendments of 1985. Sums authorized for such fiscal years shall be allotted in accordance with the following table:

States:

Alabama	.012500
Alaska	.007563
Arizona	.012500
Arkansas	.011714
California	.058321
Colorado	.010503
Connecticut	.012500
Delaware	.005801
District of Columbia	.009172
Florida	.045181
Georgia	.014570
Hawaii	.007440
Idaho	.007272
Illinois	.036851
Indiana	.019653
Iowa	.012672
Kansas	.012337
Kentucky	.015044
Louisiana	.014380
Maine	.009772
Maryland	.019722
Massachusetts	.036195
Michigan	.035063
Minnesota	.014988
Mississippi	.012500
Missouri	.025422
Montana	.005411
Nebraska	.007467
Nevada	.006805
New Hampshire	.012500
New Jersey	.048867
New Mexico	.006814
New York	.090478
North Carolina	.016168
North Dakota	.004658
Ohio	.045906
Oklahoma	.012223
Oregon	.011794
Pennsylvania	.032302
Rhode Island	.007428
South Carolina	.013399
South Dakota	.006400
Tennessee	.016674
Texas	.053882
Utah	.012486
Vermont	.006581
Virginia	.016689
Washington	.028665
West Virginia	.012712
Wisconsin	.022322
Wyoming	.005359
Samoa	.000732
Guam	.000567
Northern Marianas	.000533
Puerto Rico	.012640
Pacific Trust Territories	.001409
Virgin Islands	.000464".

CHICAGO TUNNEL AND RESERVOIR PROJECT

SEC. 203. Section 201(g)(1) of the Clean Water Act is amended by adding the following sentence: "The Chicago tunnel and reservoir project may receive grants under the previous sentence without regard to the limitation contained therein, if the Administrator determines that such project meets the cost-effectiveness requirements of sections 217 and 218 without any redesign or reconstruction, and-the Governor of the affected State demonstrates to the satisfaction of the Administrator the water quality benefits of such project.".

ELIGIBILITIES AFTER 1990

SEC. 204. (a) Section 202(a)(1) of the Clean Water Act is amended by striking out the period at the end thereof and adding the following: ", for any such grants made before October 1, 1990.".

(b) Section 204(c) of the Clean Water Act is amended by inserting "awarded a grant before October 1, 1990," after the words "such facility and interceptors".

(c) Section 205(g)(1) of the Clean Water Act is amended by striking "October 1, 1985" and inserting in lieu thereof "October 1, 1994".

DESIGN/BUILD PROJECTS

SEC. 205. Section 203 of the Clean Water Act is amended by adding at the end thereof the following new subsection:

"(f)(1) An applicant from a State allowing use of this subsection who proposes to construct waste water treatment works may enter into an agreement with the Administrator under this subsection providing for the preparation of construction plans and specifications and the erection of such treatment works, in lieu of proceeding under the other provisions of this section.

"(2) Agreements under this subsection shall be limited to projects which are, under an approved facility plan:

"(A) treatment works that have an estimated total cost of $8,000,000 or less; and

"(B) any of the following types of waste water treatment systems: aerated lagoons, trickling filters, stabilization ponds, land application systems, sand filters, and subsurface disposal systems.

"(3) An agreement entered into under this subsection shall—

"(A) set forth an amount agreed to as the maximum Federal contribution to the project, based upon a competitively bid document of basic design data and applicable standard construction specifications and a determination of the federally eligible costs of the project at the applicable Federal share under section 202 of this Act;

"(B) set forth dates for the start and completion of construction of the treatment works by the applicant and a schedule of payments of the Federal contribution to the project;

"(C) contain assurances by the applicant that (i) engineering and management assistance will be provided to manage the project; (ii) the proposed treatment works will be an operable unit and will meet all the requirements of this title; and (iii) not later than one year after the date specified as the date of completion of construction of the treatment works, the treatment works will be operating so as to meet the requirements of any applicable permit for such treatment works under section 402 of this Act;

"(D) require the applicant to obtain a bond from the contractor in an amount determined necessary by the Administrator to protect the Federal interest in the project; and

"(E) contain such other terms and conditions as are necessary to assure compliance with this title (except as provided in paragraph (4) of this subsection).

"(4) Subsections (a), (b), and (c) of this section shall not apply to grants made pursuant to this subsection.

"(5) The Administrator shall reserve a portion of the grant to assure contract compliance until final project approval as defined by the Administrator. If the amount agreed to under paragraph (3)(A) exceeds the cost of designing and constructing the treatment works, the Administrator shall reallot the amount of the excess to the State in which such treatment works are located for the fiscal year in which such audit is completed.

"(6) Not more than 25 percent of the amount allotted to a State for any fiscal year under section 205 of this Act shall be obligated for grants pursuant to this subsection.

"(7) The Administrator will determine an allowance for facilities planning for projects constructed under this subsection in accordance with section 201(l).

"(8) In any case in which the recipient of a grant made pursuant to this subsection does not comply with the terms of the agreement entered into under paragraph (3), the Administrator is authorized to take such action as may be necessary to recover the appropriate amount of the Federal contribution to the project.

"(9) A recipient of a grant made pursuant to this subsection shall not be eligible for any other grants under this title.".

INNOVATIVE AND ALTERNATIVE PROJECTS

SEC. 206. Section 205(i) of the Clean Water Act is amended to read as follows:

"(i) Not less than one-half of 1 per centum of funds allotted to a State for each of the fiscal years ending September 30, 1979, through September 30, 1990, under subsection (c) of this section shall be expended only for increasing the Federal share of grants for construction of treatment works utilizing innovative processes and techniques pursuant to section 202(a)(2) of this Act. Including the expenditures authorized by the preceding sentence, a total of 2 per centum of the funds allotted to a State for each of the fiscal years ending September 30, 1979, and September 30, 1980, and 3 per centum of the funds allotted to a State for the fiscal year ending September 30, 1981, under subsection (c) of this section shall be expended only for increasing grants for construction of treatment works pursuant to section 202(a)(2) of this Act. Including the expenditures authorized by the first sentence of this subsection, a total (as determined by the Governor of the State) of not less than 4 per centum nor more than 7½ per centum of the funds allotted to such State under subsection (c) of this section for each of the fiscal years ending September 30, 1982, through September 30, 1990, shall be expended only for increasing the Federal share of grants for construction of treatment works pursuant to section 202(a)(2) of this Act.".

MARINE CSO'S AND ESTUARIES

SEC. 207. Section 205 of the Clean Water Act is amended by adding the following new subsection:

"(l) The Administrator shall reserve each fiscal year beginning after September 30, 1985, 1 per centum (during fiscal years 1986, 1987, and 1988) or 1½ per centum (during fiscal years 1989 and 1990) of the sums appropriated under section 207, prior to allotment among the States under subsection (c) of this section. Of the sums reserved under this subsection, two-thirds shall be available to address water quality problems of marine bays and estuaries subject to lower levels of water quality due to the impacts of discharges from combined storm water and sanitary sewer overflows from adjacent urban complexes, and one-third shall be available for the implementation of section 320 of this Act. Sums so reserved shall be subject to the period of availability for obligation established under subsection (d) of this section.".

INDIAN TRIBES

SEC. 208. (a) Title II of the Clean Water Act is amended by adding the following new section:

"INDIAN TRIBES

"SEC. 220. (a) The Administrator, in cooperation with the Director of the Indian Health Service, shall assess the need for sewage treatment works to serve Indian tribes, the degree to which such needs will be met through funds allotted to States under section 205 of this Act and priority lists in accordance with section 216 of this Act, and any obstacles which prevent such needs from being met. The Administrator shall submit a report to the Congress for such assessment no later than one year after the enactment of the Clean Water Act Amendments of 1985.

"(b) Beginning with fiscal year 1987, the Administrator is authorized to reserve each fiscal year up to one-half of one per centum of the sums appropriated under section 207, prior to allotment among the States under section 205(e), based on the determination of unmet needs reported under subsection (a). Sums reserved under this subsection shall be available for grants to provide sewage treatment works to serve Indian tribes.

"(c) The Administrator is authorized to make special provision for the treatment of Indian tribes under this title, including the treatment of Indian tribes as States to the degree necessary to carry out the purposes of this section. Such special provision may include the direct provision of funds reserved under subsection (b) to the governing bodies of Indian tribes, and the determination of priorities by Indian tribes, where not determined by the Administrator in cooperation with the Director of the Indian Health Service. The Administrator is authorized to reduce the non-Federal share otherwise required under section 202 with respect to Indian tribes, as determined by the Administrator in cooperation with the Director of the Indian Health Service.".

(b) Section 502 of the Clean Water Act is amended by adding the following new paragraph:

"(20) the term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community (including any Alaska Native village, as defined in section 113(g), but not including any Alaska Native regional or village corporation) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.".

STATE WATER POLLUTION CONTROL REVOLVING FUNDS

SEC. 209. The Clean Water Act is amended by adding at the end thereof the following new title:

"TITLE VI—GRANTS FOR WATER POLLUTION CONTROL REVOLVING FUNDS

"AUTHORIZATION, ALLOTMENT, AWARD, AND PAYMENT

"SEC. 601. (a) There are hereby authorized to be appropriated the following sums to carry out the purposes of this title:

"(1) $1,200,000,000 per fiscal year for the fiscal years 1989 and 1990;

"(2) $2,400,000,000 for the fiscal year 1991;

"(3) $1,800,000,000 for the fiscal year 1992;

"(4) $1,200,000,000 for the fiscal year 1993; and

"(5) $600,000,000 for the fiscal year 1994.

"(b) For fiscal years 1989 and 1990, sums appropriated to carry out this title for each fiscal year shall be allotted by the Administrator in accordance with section 205(c) of this Act.

"(c) Sums allotted to the States for a fiscal year shall be available for a grant award under subsection (d) during the fiscal year for which authorized. The amount of any allotment not obligated by the end of such fiscal year shall be immediately reallotted by the Administrator on the basis of the same ratio as is applicable to sums allotted under title II of this Act for the next fiscal year, except that none of the funds reallotted by the Administrator will be allotted to any State which failed to obligate any of the funds being reallotted.

"(d) If a State has entered into a grant agreement with the Administrator as provided in section 602 of this title, the Administrator is authorized to make a capitalization grant to the State from funds available for obligation under this title.

"(e) From funds obligated for a given fiscal year pursuant to subsection (d) of this section, quarterly installment payments shall be made in accordance with the schedule of payments established under section 602(b)(2) of this title.

"(f) If the Administrator determines that a State has not complied with agreements under section 602, or requirements of this title, the Administrator shall notify the State of such noncompliance and the necessary corrective action. If the State does not take such corrective action by the sixtieth day after the date the State receives notice, the Administrator shall withhold additional payments to the State until the Administrator is satisfied that the State has taken the necessary corrective action.

"(g) If the Administrator is not satisfied that adequate corrective actions have been taken by the State within twelve months of the notice provided under subsection (f) of this section, the payments withheld by the Administrator shall be made available for reallotment under subsection (c) of this section.

"CAPITALIZATION GRANT AGREEMENTS WITH STATES

"SEC. 602. (a) To receive a capitalization grant under this title, a State shall enter into an agreement with the Administrator which shall include but not be limited to the specifications set forth in subsection (b) of this section.

"(b) The Administrator shall enter into an agreement with a State only after the State has established to the satisfaction of the Administrator that—

"(1) the State has established a Water Pollution Control Revolving Fund, as defined in section 603 of this title;

"(2) the State has agreed to accept grant payments under this title in accordance with a payment schedule established by the Administrator, and has agreed to deposit all such payments in the dedicated revolving fund;

"(3) the State has deposited in the fund or has agreed to deposit in the fund, from State moneys, an amount equal to at least 15 per centum of the total of all capitalization grants, so that such necessary matching deposits are made no later than the date of each grant payment under the provisions of paragraph (2) of this subsection;

"(4) the State has agreed to make binding loan commitments in an amount equal to 100 per centum of the amount of the grant payments within one year of the receipt of the quarterly payment of such funds;

"(5) the State has made adequate assurances through submission of an intended use report under section 604(c) of this title that (A) all funds available in the Water Pollution Control Revolving Fund will be committed in an expeditious and timely manner, (B) treatment works projects that are constructed in whole or in part prior to fiscal year 1995 with funds directly made available by capitalization grants under this title or section 205(m) to the State Water Pollution Control Revolving Fund will meet the same requirements applicable to grant projects funded under title II, and (C) such funds will first be used to assure maintenance of progress in the completion of all projects needed to meet the enforceable deadlines, goals, and requirements of this Act;

"(6) in addition to meeting the requirements of this title, the State has made assurances that it will commit or expend the payments so received in accordance with laws and procedures applicable to the commitment or expenditure of revenue of the State;

"(7) in carrying out the requirements of section 604 of this title, the State will use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards;

"(8) the State will require as a condition of making a loan that recipients will maintain project accounts in accordance with generally accepted government accounting standards; and

"(9) the State will make annual reports to the Administrator on the actual use of funds in accordance with section 604(d) of this title.

"STATE WATER POLLUTION CONTROL REVOLVING FUNDS

"SEC. 603. (a) To be eligible for an award of a grant under section 601 of this title, each State shall establish a Water Pollution Control Revolving Fund, administered by an instrumentality of the State with powers and limitations including those specified in subsections (b), (c), and (d) of this section.

"(b) The amounts of funds available to the Water Pollution Control Revolving Fund shall be dedicated solely to providing financial assistance (1) to any municipality, intermunicipal, interstate, or State agency for construction of publicly owned treatment works (as defined in section 212(2) of title II of this Act) and (2) for the implementation of management programs established under sections 319 and 320. The fund shall be established, maintained, and credited with repayments, and the fund balance shall be available in perpetuity for this purpose.

"(c) The instrumentality of the State administering the Water Pollution Control Revolving Fund shall be authorized to use the fund to make loans, on the condition that—

"(1) such loans are made at or below market interest rates, including interest free loans, at terms not to exceed twenty years;

"(2) annual principal payments shall commence not later than one year after completion of any project and all loans shall be fully amortized not later than twenty years after project completion;

"(3) the recipient of a loan shall establish a dedicated source of revenue for repayment of loans; and

"(4) the fund shall be credited with all repayment of principal and interest on all loans.

"(d) Except as otherwise limited by State law, a Water Pollution Control Revolving Fund may be used—

"(1) to buy or refinance the debt obligation of municipalities and intermunicipal and interstate agencies within the State at or below market rates, where such debt obligations were incurred after March 7, 1985;

"(2) to guarantee, or purchase insurance for, local obligations where such action would improve credit market access or reduce interest rates;

"(3) as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State if the proceeds of the sale of such bonds are deposited in the Water Pollution Control Revolving Fund;

"(4) to provide loan guarantees for similar revolving funds established by municipalities or intermunicipal agencies;

"(5) to earn interest on fund accounts; and

"(6) for the reasonable costs of administering the fund and conducting activities under this title provided that such amounts shall not exceed 4 per centum of all grant awards to such fund under section 601(d).

"AUDITS, REPORTS, AND FISCAL CONTROLS

"Sec. 604. (a) Each State electing to establish a Water Pollution Control Revolving Fund under this title shall establish fiscal controls and accounting procedures sufficient to assure proper accounting during appropriate accounting periods for—

"(1) payments received by the fund;

"(2) disbursements made by the fund; and

"(3) fund balances at the beginning and end of the accounting period.

"(b) The Administrator shall conduct, or require each State to have conducted, not less than annually, an independent audit to review the operations of each Water Pollution Control Revolving Fund. Such audits shall be conducted by an entity independent of the State, and in accordance with the Comptroller General's standards for auditing government organizations, programs, activities, and functions. An audit under this subsection shall be completed in such time and manner as deemed necessary or appropriate by the Administrator to carry out the purposes of this title.

"(c)(1) Each State shall, on an annual basis, prepare a plan on the intended uses of the amounts available to the fund. The plan shall include—

"(A) a description of the short and long term goals and objectives of the State's Water Pollution Control Revolving Fund;

"(B) information on the activities to be supported, including a description of project categories, discharge requirements under titles III and IV, terms of financial assistance, and communities served;

"(C) assurances and specific proposals for meeting the requirements of section 602(b)(4) and (5) of this title; and

"(D) the criteria and method established for the distribution of funds.

"(2) To meet the requirements of this subsection and to facilitate comments from interested local governments and persons on the use of funds, a State may adapt or use priority systems and lists developed under section 216 of this Act.

"(d) Beginning the first fiscal year after the receipt of payments under section 601(e) of this title, the State shall provide an annual report to the Administrator describing how the State has met the goals and objectives for the previous fiscal year as identified in the plan prepared for the previous fiscal year pursuant to subsection (c) of this section, including identification of loan recipients, loan amounts, and loan terms.

"(e) The Administrator shall conduct an annual review of each State plan and report prepared under subsections (c) and (d) of this section, and other such materials as are considered necessary and appropriate in carrying out the purposes of this title. After reasonable notice by the Administrator to the State or the recipient of a loan from a Water Pollution Control Revolving Fund, the State or loan recipient shall make available to the Administrator records the Administrator reasonably requires to review and determine compliance with this title.".

STATE-OPTION TO USE TITLE II FUNDS

Sec. 210. Section 205 is amended by adding a new subsection as follows:

"(m)(1) The Administrator is authorized to award from funds available for obligation during each fiscal year ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, September 30, 1990, September 30, 1991, September 30, 1992, September 30, 1993, and September 30, 1994, a capitalization grant to a State for the purpose of capitalizing a Water Pollution Control Revolving Fund established in compliance with title VI of this Act, where the Governor requests such action in accordance with paragraph (2) of this subsection.

"(2) No later than thirty days after the date of enactment of this Act with respect to funds available for obligation in the fiscal year beginning October 1, 1985, and not less than ninety days prior to the start of each of the fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994, a State shall provide notice of its intent to use all or a portion of the funds available for obligation in that fiscal year as a capitalization grant for a Water Pollution Control Revolving Fund under title VI of this Act.

"(3) Any sum made available to a State's Water Pollution Control Revolving Fund under this subsection shall be in addition to any funds otherwise allotted to that State under section 601(b) during any fiscal year.".

REPORT TO CONGRESS

Sec. 211. Section 516 of the Clean Water Act is amended by adding at the end thereof the following new subsection:

"(f) The Administrator shall submit to the

Congress by February 10, 1990, a report on the financial status and operations of Water Pollution Control Revolving Funds established by the States in accordance with title VI of this Act. The Administrator, in cooperation with the States, including water pollution control agencies and other water pollution control planning and financing agencies, shall include in such report the following:

"(1) an inventory of the facilities that are in significant noncompliance with the enforceable requirements of this Act;

"(2) an estimate of the cost of construction for such facilities that require construction to meet such requirements;

"(3) an assessment of the availability of sources of funds for financing such needed construction, including an estimate of the amount of funds available for loans through September 30, 1999, from the Water Pollution Control Revolving Funds established by the States under title VI of this Act;

"(4) an assessment of the operations, loan portfolio and loan conditions of Water Pollution Control Revolving Funds established by the States under title VI of this Act;

"(5) an assessment of the effect on user charges of the assistance provided by Water Pollution Control Revolving Funds established by the States under title VI, compared to assistance under title II of this Act; and

"(6) an assessment of the efficiency of the operation and maintenance of treatment works constructed with financial assistance under titles II and VI of this Act.".

MOTION OFFERED BY MR. HOWARD

Mr. HOWARD. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. HOWARD moves to strike out all after the enacting clause of the Senate bill, S. 1128, and to insert in lieu thereof the text of H.R. 8, as passed, as follows:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS; AMENDMENTS TO FEDERAL WATER POLLUTION CONTROL ACT; DEFINITION OF ADMINISTRATOR.

(a) SHORT TITLE.—This Act may be cited as the "Water Quality Renewal Act of 1985".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents; amendments to Federal Water Pollution Control Act; definition of Administrator.
Sec. 2. Authorizations of appropriations.
Sec. 3. Authorizations for construction grants.
Sec. 4. Compliance deadlines.
Sec. 5. Individual control strategies for toxic pollutants.
Sec. 6. Policy for control of nonpoint sources of pollution.
Sec. 7. Control of nonpoint sources of pollution.
Sec. 8. Lake restoration guidance manual.
Sec. 9. Small flows clearinghouse.
Sec. 10. Eligible categories of projects.
Sec. 11. Time limit on resolving certain disputes.
Sec. 12. Federal share.
Sec. 13. Agreement on eligible costs; grantee certification of treatment process; turnkey contracts.
Sec. 14. Grant conditions; user charges on low-income residential users.
Sec. 15. Allotment of construction grant funds.
Sec. 16. Grants to States for establishment of water pollution control revolving funds.
Sec. 17. Modification for nonconventional pollutants.
Sec. 18. Discharges into marine waters.
Sec. 19. Filing deadline for treatment works modification.
Sec. 20. Application for ocean discharge modifications.
Sec. 21. Innovative technology compliance deadlines for direct dischargers.
Sec. 22. Variances from the application of effluent limitations.
Sec. 23. Coal remining operations.
Sec. 24. Water quality criteria.
Sec. 25. Test procedures.
Sec. 26. Pretreatment standards.
Sec. 27. Inspection and entry.
Sec. 28. Criminal penalties.
Sec. 29. Civil penalties.
Sec. 30. Administrative penalties.
Sec. 31. Relationship to other laws.
Sec. 32. Marine sanitation devices.
Sec. 33. Clean lakes.
Sec. 34. NPDES permits.
Sec. 35. Audits.
Sec. 36. Commonwealth of the Northern Mariana Islands.
Sec. 37. Agricultural stormwater discharges.
Sec. 38. Citizen suits.
Sec. 39. Reports to Congress.
Sec. 40. Indian tribes.
Sec. 41. Definition of point source.
Sec. 42. Chesapeake and Narragansett Bays.
Sec. 43. New York and New Jersey harbor area.
Sec. 44. San Francisco Bay.
Sec. 45. Maintenance of water quality in estuaries.
Sec. 46. Research on effects of pollutants.
Sec. 47. Sewage sludge.
Sec. 48. Puget Sound.
Sec. 49. Ocean discharge research projects.
Sec. 50. Grants for replacement of contaminated groundwater.
Sec. 51. Unconsolidated quarternary aquifer.
Sec. 52. Grants for protecting groundwater quality.
Sec. 53. Demonstration program on acidified lakes.
Sec. 54. Newtown Creek, New York.
Sec. 55. San Diego, California.
Sec. 56. Naco, Arizona.
Sec. 57. Limitation on discharge of raw sewage by New York City.
Sec. 58. Deer Island treatment plant, Massachusetts.
Sec. 59. Great Lakes International Coordinating Office.
Sec. 60. Oakwood Beach and Red Hook projects, New York.
Sec. 61. Chippewa Township, Pennsylvania.
Sec. 62. Des Moines, Iowa.
Sec. 63. Wastewater reclamation demonstration.
Sec. 64. Boston Harbor and adjacent waters.
Sec. 65. Treatment works in Washington State.
Sec. 66. Improvement projects.
Sec. 67. Study of regulation of de minimis discharges.
Sec. 68. Study of effectiveness of innovative and alternative processes and techniques.
Sec. 69. Water quality improvement study.
Sec. 70. Study of testing procedures.
Sec. 71. Study of pretreatment of toxic pollutants.
Sec. 72. Studies of water pollution problems in aquifers.
Sec. 73. Great Lakes consumptive uses study.

Sec. 74. Sulfide corrosion study.
Sec. 75. Pulp mill study.
Sec. 76. Study of rainfall induced infiltration into sewer systems.
Sec. 77. Study of pH in discharges from mining operations.
Sec. 78. Study of pollution in Lake Pend Oreille, Idaho.
Sec. 79. Limitation on payments.
Sec. 80. Rights and liabilities under other Federal statutes.

(c) Amendment of Federal Water Pollution Control Act.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Water Pollution Control Act.

(d) Definition.—For purposes of this Act, the term "Administrator" means the Administrator of the Environmental Protection Agency.

SEC. 2. AUTHORIZATIONS OF APPROPRIATIONS.

(a) Research and Investigations.—Section 104(u) is amended—

(1) in clause (1) by inserting after "September 30, 1982," the following: "and not to exceed $22,770,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990,";

(2) in clause (2) by striking out "and $3,000,000 for fiscal year 1982," and inserting in lieu thereof the following: "$3,000,000 for fiscal year 1982, and $3,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990,"; and

(3) in clause (3) by striking out "and $1,500,000 for fiscal year 1982," and inserting in lieu thereof the following: "$1,500,000 for fiscal year 1982, and $1,500,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990,".

(b) Grants for Program Administration.—Section 106(a)(2) is amended by inserting after "1982" a comma and the following: "and $75,000,000 per fiscal year for each of the fiscal years 1983, 1984, 1985, 1986, 1987, 1988, 1989, and 1990".

(c) Training Grants and Scholarships.—Section 112(c) is amended by striking out "and $7,000,000 for the fiscal year ending September 30, 1982," and inserting in lieu thereof the following: "$7,000,000 for the fiscal year ending September 30, 1982, and $7,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990,".

(d) Areawide Planning.—Section 208(f)(3) is amended by striking out "and" after "1974," and after "1980," and by inserting after "1982" the following: ", not to exceed $100,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, and September 30, 1985, and not to exceed $50,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990".

(e) Rural Clean Water.—Section 208(j)(9) is amended by striking out "and" after "1981," and by inserting after "1982," the following: "$100,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, and September 30, 1985, and $50,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990,".

(f) Interagency Agreements.—Section 304(k)(3) is amended by striking out "1983" and inserting in lieu thereof "1985 and $50,000,000 per fiscal year for the fiscal years 1986 through 1990".

(g) Clean Lakes.—Section 314(c)(2) is amended by striking out "and $30,000,000 for fiscal year 1982" and inserting in lieu thereof the following: "$30,000,000 for fiscal year 1982, and $30,000,000 per fiscal year for each of the fiscal years 1983, 1984, 1985, 1986, 1987, 1988, 1989, and 1990".

(h) General Authorization.—Section 517 is amended by striking out "and $161,000,000 for the fiscal year ending September 30, 1982" and inserting in lieu thereof "$161,000,000 for the fiscal year ending September 30, 1982, $160,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, and September 30, 1985, and $110,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990".

SEC. 3. AUTHORIZATIONS FOR CONSTRUCTION GRANTS.

Section 207 is amended by striking out "and September 30, 1985," and inserting in lieu thereof "September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990,".

SEC. 4. COMPLIANCE DEADLINES.

(a) Priority Toxic Pollutants.—Section 301(b)(2)(C) is amended to read as follows:

"(C) for all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established;".

(b) Other Toxic Pollutants.—Section 301(b)(2)(D) is amended by striking out "not later than three years after the date such limitations are established" and inserting in lieu thereof "as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established".

(c) Conventional Pollutants.—Section 301(b)(2)(E) is amended to read as follows:

"(E) for all pollutants identified pursuant to section 304(a)(4) of this Act compliance with effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which shall require application of the best conventional pollutant control technology, as determined in accordance with regulations issued by the Administrator pursuant to section 304(a)(4) of this Act, as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established;".

(d) Other Pollutants.—Section

301(b)(2)(F) is amended to read as follows:

"(F) for all pollutants (other than those subject to subparagraph (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established.".

(e) DEADLINES FOR REGULATIONS FOR CERTAIN TOXIC POLLUTANTS.—The Administrator shall promulgate final regulations establishing effluent limitations in accordance with sections 301(b)(2)(A) and 307(b)(1) of the Federal Water Pollution Control Act for all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives which are discharged from the categories of point sources in accordance with the following table:

Category	Date by which the final regulation shall be promulgated
Foundries	June 30, 1985.
Nonferrous metals forming.	June 30, 1985.
Organic chemicals and plastics and synthetic fibers.	March 31, 1986.
Pesticides	August 31, 1985.
Nonferrous metals (phase II).	July 31, 1985.

SEC. 5. INDIVIDUAL CONTROL STRATEGIES FOR TOXIC POLLUTANTS.

(a) IN GENERAL.—Section 304 is amended by adding at the end thereof the following new subsection:

"(l) INDIVIDUAL CONTROL STRATEGIES FOR TOXIC POLLUTANTS.—

"(1) STATE LIST OF NAVIGABLE WATERS.—Not later than one year after the date of the enactment of this subsection, each State shall submit to the Administrator for review, approval, and implementation under this subsection—

"(A) a list of all navigable waters in such State for which the State does not expect the applicable standard under section 303 of this Act will be achieved after the requirements of sections 301(b), 306, and 307(b) are met, due entirely or substantially to discharges from point sources of any toxic pollutants listed pursuant to section 307(a);

"(B) for each segment of the navigable waters included on such list, a determination of the specific point sources discharging any such toxic pollutant which is believed to be preventing or impairing such water quality and the amount of each such toxic pollutant discharged by each such source; and

"(C) for each such segment, an individual control strategy which the State determines will produce a reduction in the discharge of toxic pollutants from point sources identified by the State under this paragraph through the establishment of effluent limitations under section 302 of this Act and water quality standards under section 303(c)(4)(B) of this Act, which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than three years after the date of the establishment of such strategy.

"(2) APPROVAL OR DISAPPROVAL.—Not later than 120 days after the last day of the one-year period referred to in paragraph (1), the Administrator shall approve or disapprove the control strategies submitted under paragraph (1) by any State.

"(3) ADMINISTRATOR'S LIST OF NAVIGABLE WATERS.—If a State fails to submit control strategies in accordance with paragraph (1) or the Administrator does not approve the control strategies submitted by such State in accordance with paragraph (1), then, not later than one year after the last day of the period referred to in paragraph (2), the Administrator, in cooperation with such State and after notice and opportunity for public comment, shall publish in the Federal Register a list of all navigable waters in such State for which the Administrator does not expect the applicable standard under section 303 of this Act will be achieved after the requirements of sections 301(b), 306, and 307(b) are met, due entirely or substantially to discharges from point sources of any toxic pollutants listed pursuant to section 307(a). For each segment of the navigable waters included on such list, the Administrator shall determine the specific point sources discharging any such toxic pollutant which is believed to be preventing or impairing such water quality and the amount of each such toxic pollutant discharged by each such source. At a minimum, the Administrator shall consider for listing under this subsection any navigable waters for which any person submits a petition to the Administrator for listing not later than 120 days after such last day.

"(4) ADMINISTRATOR'S DEVELOPMENT AND PUBLICATION.—Not later than one year after the date of publication of the list required by paragraph (3) of this subsection, the Administrator, in cooperation with the States, shall issue proposed regulations setting forth, for each segment of the navigable waters listed under paragraph (3), an individual control strategy. Each individual control strategy shall produce a reduction in the discharge of toxic pollutants from point sources identified by the Administrator under paragraph (3) through the establishment of effluent limitations under section 302 of this Act and water quality standards under section 303(c)(4)(B) of this Act, which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than three years after the date of promulgation of the final strategy. Not later than 180 days after issuing the proposed regulations, the Administrator shall promulgate each individual control strategy as a final regulation.

"(5) IMPLEMENTATION.—The Administrator shall implement each individual control strategy established or promulgated under this subsection by modifying or requiring the modification of permits under section 402 of this Act.".

(b) JUDICIAL REVIEW.—Section 509(b)(1) is amended by striking out "and (F)" and inserting in lieu thereof "(F)" and by inserting after "any permit under section 402," the following: "and (G) in promulgating any individual control strategy under section 304(l),".

SEC. 6. POLICY FOR CONTROL OF NONPOINT SOURCES OF POLLUTION.

Section 101(a) is amended by striking out "and" at the end of paragraph (5), by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and", and by adding at the end thereof the following:

"(7) it is the national policy that plans for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this Act to be met through the control of both point and nonpoint sources of pollution.".

SEC. 7. CONTROL OF NONPOINT SOURCES OF POLLUTION.

(a) In General.—Title III is amended by adding at the end the following new section:

"SEC. 319. NONPOINT SOURCE CONTROL PROGRAMS.

"(a) State Assessment Reports.—

"(1) Contents.—The Governor of each State shall prepare and submit to the Administrator for his approval, a report which—

"(A) identifies those portions of the navigable waters within the State which, as a result (in whole or in part) of pollution from nonpoint sources, are not meeting applicable water quality standards or the goals and requirements of this Act;

"(B) identifies those categories and subcategories of nonpoint sources which add significant pollution to each portion of the navigable waters identified under subparagraph (A) in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;

"(C) identifies and describes State and local programs for controlling pollution added from nonpoint sources to, and improving the quality of, each such portion of the navigable waters, including but not limited to those programs which are receiving Federal assistance under subsection (i); and

"(D) describes the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control each category and subcategory of nonpoint sources identified under subparagraph (B) and to reduce, to the maximum extent practicable, the level of pollution resulting from such category or subcategory.

"(2) Information used in preparation.—Each report submitted under paragraph (1) shall be based on available information including, but not limited to, information available under sections 208, 303(e), 304(f), and 305(b) of this Act, and may include all or part of any water quality management program approved under section 208 or 303 of this Act.

"(b) State Plans.—

"(1) In general.—The Governor of each State shall prepare and submit to the Administrator for his approval—

"(A) a plan which such State proposes to implement in the first four fiscal years beginning after the date of submission of such plan for controlling pollution added from nonpoint sources to the navigable waters within the State and improving the quality of such waters; and

"(B) a report which (i) identifies each department, agency, or instrumentality of the United States and each department, agency, or instrumentality of the State which is likely to be engaging in, supporting, or providing financial assistance in each of such fiscal years for any activity or program in the State which, if carried out, would be inconsistent with implementation of such plan in such fiscal years, and (ii) recommends to the Administrator methods by which such Federal department, agency, or instrumentality could modify administration of such activity or program, and describes methods by which such State department, agency, or instrumentality intends to modify administration of such activity or program, so that such activity or program is consistent with, and assists the State in implementation of, such plan.

"(2) Specific contents.—Each plan proposed for implementation under this subsection shall specify—

"(A) from among those portions of navigable waters significantly affected by pollution added from nonpoint sources, each portion and land area contributing such pollution with respect to which the State plans to assist, encourage, or require implementation of best management practices and measures in the first four fiscal years beginning after the date of submission of such plan;

"(B) the order in which, and the schedule under which, the State plans to assist, encourage, or require implementation of such practices and measures in such fiscal years;

"(C) from among those categories and subcategories of nonpoint sources of pollution which contribute to each portion specified under subparagraph (A) not meeting applicable water quality standards or the goals and requirements of this Act, the categories and subcategories with respect to which the State plans to assist, encourage, or require implementation of such practices and measures in such fiscal years and the relative contribution of such pollution by category and subcategory of such sources;

"(D) the best management practices and measures the implementation of which the State plans to assist, encourage, or require in each of such fiscal years to reduce pollution resulting from nonpoint sources and to improve water quality;

"(E) the methods (including, but not limited to, demonstration, enforcement, technical assistance, education, training, and cost-sharing programs), by category and subcategory of such sources of pollution, which the State plans to use to encourage, assist, or require implementation of such practices and measures in such fiscal years; and

"(F) sources of Federal and other assistance (other than assistance provided under subsection (i)) which will be available in each of such fiscal years for supporting implementation of such practices and measures and the purposes for which such assistance will be used in each of such fiscal years.

"(3) Certification of legal authority.—Each plan submitted by a State under this subsection shall be accompanied by a certification of the attorney general of the State or the chief attorney of any State water pollution control agency which has independent legal counsel that the laws of the State provide adequate authority to implement such plan or, if there is not such adequate authority, a list of such additional authority which will be necessary to implement such plan.

"(4) Implementation schedule.—The schedule required by paragraph (2)(B) shall establish for each category and subcategory of nonpoint sources of pollution specified under paragraph (2)(C) an expeditious time period for implementation of best management practices and measures specified under paragraph (2)(D) and shall indicate the estimated dates for implementation of such practices and measures.

"(5) UTILIZATION OF LOCAL AND PRIVATE EXPERTS.—In developing and implementing a plan under this subsection, a State shall, to the maximum extent practicable, utilize local public and private agencies and organizations which have expertise in control of nonpoint sources of pollution.

"(6) DEVELOPMENT ON WATERSHED BASIS.—A State shall, to the maximum extent practicable, develop and implement a plan under this subsection on a watershed-by-watershed basis.

"(c) ADMINISTRATIVE PROVISIONS.—

"(1) COOPERATION REQUIREMENT.—Any report required by subsection (a) and any plan and report required by subsection (b) shall be developed in cooperation with local, regional, and interstate entities which are actively planning for the implementation of non-point source pollution controls and have either been certified by the Administrator in accordance with section 208, have worked jointly with the State on water quality management planning under section 205(j), or have been designated by the State legislative body or Governor as water quality management planning agencies for their geographic areas.

"(2) TIME PERIOD FOR SUBMISSION OF REPORTS AND PLANS.—Each report and plan shall be submitted to the Administrator during the 270-day period beginning on the date of the enactment of this section; except that upon request of the Governor, the Administrator shall extend such period for not to exceed an additional 270 days.

"(3) FAILURE OF STATE TO SUBMIT REPORT.—If a Governor of a State does not submit the report required by subsection (a) during such period, the Administrator shall prepare a report for such State which makes the identifications required by paragraphs (1)(A) and (1)(B) of subsection (a).

"(d) CONSOLIDATION OF RECOMMENDATIONS FOR UNITED STATES AGENCIES.—The Administrator shall consolidate recommendations for modifications of activities and programs submitted by the States under subsection (b)(1)(B) and submit such consolidated recommendations to the appropriate departments, agencies, and instrumentalities of the United States. Each such department, agency, or instrumentality, to the maximum extent practicable and consistent with existing law, shall accommodate such recommendations and shall carry out its own activities and programs in a manner which is consistent with, and will assist implementation of, the plan submitted by the State under subsection (b) and approved by the Administrator under this section.

"(e) APPROVAL OR DISAPPROVAL OF REPORTS AND PLANS.—

"(1) DEADLINE.—Subject to paragraph (2), not later than 180 days after the date of submission to the Administrator of any report or plan under this section (other than subsections (i) and (j)), the Administrator shall either approve or disapprove such report or plan, as the case may be. The Administrator may approve a portion of a plan under this subsection. If the Administrator does not disapprove a report, plan, or portion of a plan in such 180-day period, such report, plan, or portion shall be deemed approved for purposes of this section.

"(2) PROCEDURE FOR DISAPPROVAL.—If, after notice and opportunity for public comment and consultation with appropriate Federal and State agencies and other interested persons, the Administrator determines that a plan submitted under subsection (b) or any portion thereof is not likely to satisfy, in whole or in part, the goals and requirements of this Act, that adequate authority does not exist, or adequate resources are not available, to implement such plan or portion, that the schedule for implementing such plan or portion is not sufficiently expeditious, or that the practices and measures proposed in such plan or portion are not adequate to improve the quality of navigable waters in the State and to reduce the level of pollution in navigable waters in the State resulting from nonpoint sources, the Administrator shall disapprove the plan or portion thereof with respect to which the Administrator makes such determination. The Administrator shall notify the State of such disapproval and request specific revisions of such plan or portion necessary to obtain approval of such plan or portion. Not later than 90 days after the date of such notification, the State shall submit to the Administrator for his approval under this subsection its revisions of such plan or portion.

"(f) LOCAL PLANS; TECHNICAL ASSISTANCE.—If a State fails to submit a plan under subsection (b) or the Administrator does not approve such a plan, a local public agency or organization which has expertise in, and authority to, control water pollution resulting from nonpoint sources in any area of such State which the Administrator determines is of sufficient geographic size may, with approval of such State, request the Administrator to provide, and the Administrator shall provide, technical assistance to such agency or organization in developing for such area a plan which is described in subsection (b) and meets the requirements of subsection (e). After development of such plan, such agency or organization shall submit such plan to the Administrator for his approval. If the Administrator approves such plan, such agency or organization shall be eligible to receive financial assistance under subsection (i) for implementation of such plan as if such agency or organization were a State for which a report submitted under subsection (a) and a plan submitted under subsection (b) were approved under this section. Such financial assistance shall be subject to the same terms and conditions as assistance provided to a State under subsection (i).

"(g) TECHNICAL ASSISTANCE FOR STATES.—Upon request of a State, the Administrator may provide technical assistance to such State in developing a plan under subsection (b) for those portions of the navigable waters requested by such State.

"(h) INTERSTATE MANAGEMENT CONFERENCE.—

"(1) CONVENING OF CONFERENCE; NOTIFICATION; PURPOSE.—If any portion of the navigable waters in any State which is implementing a plan approved under this section is not meeting applicable water quality standards or the goals and requirements of this Act as a result, in whole or part, of pollution from nonpoint sources in another State, such State may petition the Administrator to convene, and the Administrator shall convene, a management conference of all States which contribute pollution resulting from nonpoint sources to such portion. If, on the basis of information available to him, the Administrator determines that a State is not meeting applicable water quality standards or the goals and requirements of this Act as a result, in whole or part, of pollution from nonpoint sources in another State, the Administrator shall notify such States. The Ad-

ministrator may convene a management conference under this paragraph not later than 180 days after giving such notification, whether or not the State which is not meeting such standards requests such conference. The purpose of such conference shall be to develop an agreement among such States to reduce the level of pollution in such portion resulting from nonpoint sources and to improve the water quality of such portion.

"(2) STATE PLAN REQUIREMENT.—Each State which contributes significant pollution from nonpoint sources to the portion of navigable waters in amounts which contribute to such portion not meeting applicable water quality standards or the goals and requirements of this Act shall submit to the Administrator for his approval a plan referred to in subsection (b) to reduce the level of pollution in such portion resulting from nonpoint sources in such State and to improve the quality of such portion; except that if such State has an approved plan under subsection (b), such State shall revise such plan to reduce the level of pollution in such portion resulting from nonpoint sources in such State and to improve the water quality of such portion and submit such revised plan to the Administrator for his approval under this section. Such plan or revised plan shall be consistent with existing Federal and State law. After approval, the State shall implement such plan or revised plan.

"(i) GRANT PROGRAM.—

"(1) GRANTS FOR IMPLEMENTATION OF PLANS.—Upon application of a State for which a report submitted under subsection (a) and a plan submitted under subsection (b) is approved under this section, the Administrator shall make grants under this subsection to such State for the purpose of assisting the State in implementing such plan.

"(2) APPLICATIONS.—An application for a grant under this subsection in any fiscal year shall be in such form and shall contain such other information as the Administrator may require, including an identification and description of the best management practices and measures which the State proposes to assist, encourage, or require in such year with the Federal assistance to be provided under the grant.

"(3) FEDERAL SHARE.—

"(A) IN GENERAL.—The Federal share of the cost of each plan implemented with Federal assistance under this subsection in any fiscal year shall not exceed 50 percent of the cost incurred by the State in implementing such plan.

"(B) EXCEPTION.—The Federal share of those costs of any such plan which are attributable to a watershed area with respect to which the Administrator determines that a significant number of non-Federal, non-State interests of such area are willing and able to enter into agreements to participate in such year in nonpoint source pollution control measures under such plan shall be not less than 50 percent and not more than 60 percent of such cost.

"(C) LIMITATION ON ADMINISTRATIVE COSTS.—For purposes of this paragraph, administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against activities and programs carried out with a grant under this subsection shall not exceed in any fiscal year 10 percent of the amount of the grant in such year, except that costs of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer programs shall not be subject to this limitation.

"(4) MAINTENANCE OF EFFORT.—No grant may be made to a State under this subsection in any fiscal year unless such State enters into such agreements with the Administrator as the Administrator may require to ensure that such State will maintain its aggregate expenditures from all other sources for programs for controlling pollution added to the navigable waters in such State from nonpoint sources and improving the quality of such waters at or above the average level of such expenditures in its two fiscal years preceding the date of enactment of this subsection.

"(5) REPORTING AND OTHER REQUIREMENTS.—

"(A) REPORT.—Each State which receives a grant under this subsection in any fiscal year shall submit to the Administrator a written report which describes the activities and programs carried out in the State under such grant and the progress made by such State in meeting the schedule specified under subsection (b)(2)(B).

"(B) SATISFACTORY PROGRESS.—No grant may be made under this subsection in any fiscal year to a State which in the preceding fiscal year received a grant under this subsection unless the Administrator determines that such State made satisfactory progress in such preceding fiscal year in meeting the schedule specified by such State under subsection (b)(2)(B).

"(6) LIMITATION ON GRANT AMOUNTS.—Notwithstanding any other provision of this subsection, not more than 15 percent of the amount appropriated to carry out this subsection may be used to make grants to any one State, including any grants to any local public agency or organization with authority to control pollution from nonpoint sources in any area of such State.

"(7) PRIORITY FOR EFFECTIVE REGULATORY MECHANISMS.—For each fiscal year beginning after September 30, 1987, the Administrator may give priority in making grants under this subsection, and shall give consideration in determining the Federal share of any such grant, to any State which has included effective regulatory mechanisms in an approved State plan under this section and has implemented such mechanisms in the preceding fiscal year. Such mechanisms shall include, but are not limited to, deadlines for implementation of best management practices and enforcement procedures to ensure implementation of such plan.

"(8) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection not to exceed $150,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990. Sums appropriated to carry out this subsection shall remain available until expended.

"(j) REPORTS OF ADMINISTRATOR.—

"(1) ANNUAL REPORTS.—Not later than January 1, 1986, and each January 1 thereafter the Administrator shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate, a report for the preceding fiscal year on the activities and programs implemented under this section and the progress made in reducing pollution in the navigable waters resulting from nonpoint sources and improving the quality of such waters.

"(2) FINAL REPORT.—Not later than Janu-

ary 1, 1989, the Administrator shall transmit to Congress a final report on the activities carried out under this section. Such report, at a minimum, shall include—

"(A) an analysis of the effectiveness of plans carried out under this section and of the best management practices and measures utilized under those plans in controlling nonpoint sources of pollution;

"(B) an analysis of the level of State participation in implementing such plans; and

"(C) recommendations of the Administrator concerning future programs (including enforcement programs) for controlling pollution from nonpoint sources.

"(k) SET ASIDE FOR ADMINISTRATIVE PERSONNEL.—Not less than 5 percent of the funds appropriated to carry out subsection (i) for any fiscal year shall be available to the Administrator to maintain personnel levels at the Environmental Protection Agency at levels which are adequate to carry out this section in such year.".

(b) CONFORMING AMENDMENT.—Section 304(k)(1) of the Federal Water Pollution Control Act is amended by inserting "and 319" after "208".

SEC. 8. LAKE RESTORATION GUIDANCE MANUAL.

Section 104(h) is amended by inserting "(1)" after "(h)" and by adding at the end thereof the following:

"(2) The Administrator shall submit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than one year after the date of the enactment of this paragraph a lake restoration guidance manual establishing procedures to guide future State and local efforts to improve water quality in lakes.".

SEC. 9. SMALL FLOWS CLEARINGHOUSE.

Section 104(q) is amended by adding at the end thereof the following new paragraph:

"(4) Notwithstanding section 205(d) of this Act, from amounts that are set aside for a fiscal year under section 205(i) of this Act and are not obligated by the end of the 24-month period of availability for such amounts under section 205(d), the Administrator shall make available $1,000,000 or such unobligated amount, whichever is less, to support a national clearinghouse within the Environmental Protection Agency to collect and disseminate information on small flows of sewage and innovative or alternative wastewater treatment processes and techniques, consistent with paragraph (3). This paragraph shall apply with respect to amounts set aside under section 205(i) for which the 24-month period of availability referred to in the preceding sentence ends on or after September 30, 1985.".

SEC. 10. ELIGIBLE CATEGORIES OF PROJECTS.

(a) COLLECTOR SEWERS AND COMBINED SEWER OVERFLOWS.—The second sentence of section 201(g)(1) is amended by striking out "appurtenances, and" and inserting in lieu thereof "appurtenances," and by striking out the period at the end of such sentence and inserting in lieu thereof the following: ", and projects to address water quality problems due to impacts of discharges from combined stormwater and sanitary sewer overflows.".

(b) NONPOINT SOURCES.—The last sentence of section 201(g)(1) is amended by—

(1) striking out "sentence," the first place it appears and inserting in lieu thereof "sentences,";

(2) inserting "(A)" after "October 1, 1984, for"; and

(3) inserting before "except that" the following: "and (B) any purpose for which a grant may be made under section 319(i) of this Act (including any innovative and alternative approaches for the control of nonpoint sources of pollution),".

SEC. 11. TIME LIMIT ON RESOLVING CERTAIN DISPUTES.

Section 201 is amended by adding at the end thereof the following new subsection:

"(p) TIME LIMIT ON RESOLVING CERTAIN DISPUTES.—In any case in which a dispute arises with respect to the awarding of a contract for construction of treatment works by a grantee of funds under this title and a party to such dispute files an appeal with the Administrator under this title for resolution of such dispute, the Administrator shall make a final decision on such appeal within 60 days of the filing of such appeal.".

SEC. 12. FEDERAL SHARE.

(a) COMBINED SEWER OVERFLOWS.—The last sentence of section 202(a)(1) is amended—

(1) by inserting after "correction" the first place it appears the following: "or a project to address water quality problems due to impacts of discharges from combined storm water and sanitary sewer overflows"; and

(2) by striking out "and" after "interceptors," and by inserting after "correction" the third place it appears the following: ", and project to address such problems".

(b) PROJECTS UNDER JUDICIAL INJUNCTION.—Section 202(a)(1) is amended by adding at the end thereof the following: "Notwithstanding the first sentence of this paragraph, in the case of a project for which an application for a grant under this title has been made to the Administrator before October 1, 1984, and which project is under judicial injunction on such date prohibiting its construction, such project shall be eligible for grants at 75 percent of the cost of construction thereof.".

(c) PROJECTS UNDER JUDICIAL ORDER.—Section 202(a)(1) is amended by adding at the end thereof the following: "Notwithstanding the first sentence of this paragraph, in the case of the Whoming Valley Sanitary Authority project mandated by judicial order under a proceeding begun prior to October 1, 1984, such project shall be eligible for grants at 75 percent of the cost of construction thereof.".

(d) BIODISC EQUIPMENT.—Section 202(a)(3) is amended by inserting at the end thereof the following: "In addition, the Administrator is authorized to make a grant to fund all of the costs of the modification or replacement of biodisc equipment (rotating biological contractors) in any publicly owned treatment works if the Administrator finds that such equipment has failed to meet design performance specifications, unless such failure is attributable to negligence on the part of any person, and if such failure has significantly increased capital or operating and maintenance expenditures.".

(e) INNOVATIVE PROCESS.—The activated bio-filter feature of the project for treatment works of the city of Little Falls, Minnesota, shall be deemed to be an innovative wastewater process and technique for purposes of section 202(a)(2) of the Federal Water Pollution Control Act and the amount of any grant under such Act for such feature shall be 85 percent of the cost thereof.

(f) AVAILABILITY OF CERTAIN FUNDS FOR NON-FEDERAL SHARE.—Notwithstanding any other provision of law, Federal assistance

made available by the Farmers Home Administration to any political subdivision of a State may be used to provide the non-Federal share of the cost of any construction project carried out under section 201 of the Federal Water Pollution Control Act.

SEC. 12. AGREEMENT ON ELIGIBLE COSTS; GRANTEE CERTIFICATION OF TREATMENT PROCESS; TURNKEY CONTRACTS.

(a) AGREEMENT ON ELIGIBLE COSTS; GRANTEE CERTIFICATION.—Section 203(a) is amended by inserting "(1)" after "(a)", by designating the last sentence as paragraph (4) and indenting such sentence as a paragraph, and by inserting before paragraph (4) as so designated the following:

(2)(A) Before taking final action on any plans, specifications, and estimates submitted under this subsection, the Administrator shall enter into a written agreement with the applicant which establishes and specifies which items of the proposed project are eligible for Federal payments under this section. The Administrator may not later modify such eligibility determinations unless they are found to have been made in violation of applicable Federal statutes and regulations.

"(B) Eligibility determinations under this paragraph shall not preclude the Administrator from auditing a project pursuant to section 501 of this Act, or other authority, or from withholding or recovering Federal funds for costs which are found to be unreasonable, unsupported by adequate documentation, or otherwise unallowable under applicable Federal cost principles, or which are incurred on a project which fails to meet the design specifications or effluent limitations contained in the grant agreement and permit pursuant to section 402 of this Act for such project.

"(3) The approval of construction plans and specifications by the Administrator under this section shall not include a determination or approval of the treatment work's unit processes, or the configuration of the treatment work's unit processes, which constitute the treatment technology. The Administrator shall not approve plans, specifications, and estimates for a project under this section unless the applicant certifies that the proposed unit processes and treatment technology are capable of meeting the effluent limitations for which such process and technology are designed.".

(b) TURNKEY CONTRACTS.—Section 203 is amended by adding at the end thereof the following new subsection:

"(f) TURNKEY CONTRACTS.—

"(1) GENERAL AUTHORITY FOR LOW COST PROJECTS.—After completion of an approved facility plan for construction of a treatment works which has an estimated total cost of $8,000,000 or less (as determined by the Administrator), the applicant proposing to construct such treatment works may, in lieu of proceeding under the other provisions of this section, enter into an agreement with the Administrator under this subsection for the preparation of construction plans and specifications and the building and erection of such treatment works.

"(2) REQUIRED TERMS AND CONDITIONS.—An agreement entered into under this subsection shall—

"(A) set forth an amount agreed to by the Administrator and the applicant as the maximum Federal contribution to the project, based upon a determination of the federally eligible costs of the project at the applicable Federal share under section 202 of this Act;

"(B) set forth a date for completion of construction of the treatment works by the applicant and a schedule of payments by the Administrator of the Federal contribution to the project;

"(C) contain such assurances by the applicant as the Administrator may require that (i) the proposed treatment works will be an operable unit and will meet all the requirements of this title (except as otherwise provided in paragraph (3) of this subsection), and (ii) not later than one year after the date specified as the date for completion of construction of the treatment works, the treatment works will be operating so as to meet the requirements of any applicable permit for such treatment works under section 402 of this Act;

"(D) require the applicant and any agent or contractor of the applicant to provide a bond in an amount determined necessary by the Administrator to protect the Federal interest in the project; and

"(E) contain such other terms and conditions as the Administrator deems necessary to ensure compliance with this title (except as provided in paragraph (3) of this subsection).

"(3) NONAPPLICABILITY OF CERTAIN STATUTORY REQUIREMENTS.—Sections 201(g)(3), 203 (other than this subsection and except with respect to the development and approval of a facility plan), 204(a)(5), 204(a)(6), and 204(d)(1) shall not apply to grants made pursuant to this subsection.

"(4) INTEREST-BEARING ACCOUNTS.—

"(A) DEPOSIT OF FEDERAL CONTRIBUTION.—Upon entering into an agreement under this subsection, the Administrator shall deposit, from amounts allotted to the State for such fiscal year under section 205 of this Act, the amount of the Federal contribution to the project agreed upon by the Administrator and the applicant into an interest-bearing account. Such amount shall be available only for making payments to the grantee in accordance with the schedule contained in the agreement.

"(B) LIMITATION ON USE OF EARNED INTEREST.—Interest earned on amounts in the account under subparagraph (A) shall be available for payments to the grantee. Such payments shall be made solely for the purpose of reducing the net interest costs incurred by the grantee on obligations issued by the grantee for construction of such treatment works. The amount of such payments shall be in addition to the Federal share of the project otherwise allowable. The amount of any such interest earned which exceeds the amount of such interest costs incurred shall be deposited in the general fund of the Treasury after the final audit of the project.

"(5) ADMINISTRATIVE PROVISIONS.—

"(A) RESERVATION UNTIL FINAL AUDIT.—The Administrator shall reserve a portion of the amount in the account under paragraph (4)(A) until the final audit of the project.

"(B) REALLOTMENT OF ANY EXCESS.—If the amount deposited into the account by the Administrator under paragraph (4)(A) exceeds the cost of preparing construction plans and specifications and the building and erection of the treatment works, the Administrator shall reallot the amount of the excess to the State in which such treatment works is located for the fiscal year in which such audit is completed.

"(6) PER STATE LIMITATION.—The Administrator shall not obligate more than 20 percent of the amount allotted to a State for a fiscal year under section 205 of this Act for

grants pursuant to this subsection.

"(7) LIMITATION ON FEDERAL CONTRIBUTION.—In no event shall the Federal contribution for the cost of preparing construction plans and specifications and the building and erection of treatment works pursuant to this subsection exceed the amount agreed upon under paragraph (2), plus interest paid to the grantee under paragraph (4)(B).

"(8) NONCOMPLIANCE WITH AGREEMENT.—In any case in which the recipient of a grant made pursuant to this subsection does not comply with the terms of the agreement entered into under paragraph (2), the Administrator is authorized to take such action as may be necessary to recover the amount of the Federal contribution to the project.

"(9) LIMITATION ON ELIGIBILITY OF RECIPIENTS OF TURNKEY GRANTS.—A recipient of a grant made pursuant to this subsection shall not be eligible for any other grants under this title.".

SEC. 14. GRANT CONDITIONS; USER CHARGES ON LOW-INCOME RESIDENTIAL USERS.

(a) INCLUSION OF PROJECT IN AREAWIDE PLAN.—Section 204(a)(1) is amended to read as follows:

"(1) that any required areawide waste treatment management plan under section 208 of this Act (A) is being implemented for such area and the proposed treatment works are included in such plan, or (B) is being developed for such area and reasonable progress is being made toward its implementation and the proposed treatment works will be included in such plan;".

(b) CONTINUING PLANNING PROCESS.—Section 204(a)(2) is amended to read as follows:

"(2) that (A) the State in which the project is to be located (i) is implementing any required plan under section 303(e) of this Act and the proposed treatment works are in conformity with such plan, or (ii) is developing such a plan and the proposed treatment works will be in conformity with such plan, and (B) such State is in compliance with section 305(b) of this Act;".

(c) USER CHARGES ON LOW-INCOME RESIDENTIAL USERS.—Section 204(b)(1) is amended by adding at the end thereof the following: "A system of user charges which imposes a lower charge for low-income residential users (as defined by the Administrator) shall be deemed to be a user charge system meeting the requirements of clause (A) of this paragraph if the Administrator determines that such system was adopted after public notice and hearing.".

(d) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act, except that the amendments made by subsections (a) and (b) shall take effect on the last day of the two-year period beginning on such date of enactment.

SEC. 15. ALLOTMENT OF CONSTRUCTION GRANT FUNDS.

(a) FORMULA.—

(1) DATE OF ALLOTMENT.—Section 205(c)(2) is amended by inserting after the first sentence the following: "Sums authorized to be appropriated pursuant to section 207 for the fiscal years 1986, 1987, 1988, 1989, and 1990 shall be allotted for each such year by the Administrator not later than the tenth day which begins after the date of the enactment of the Water Quality Renewal Act of 1985.".

(2) EXTENSION.—Section 205(c)(2) is further amended by striking out "and September 30, 1985," and inserting in lieu thereof "September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990,".

(b) MINIMUM ALLOTMENT.—

(1) EXTENSION.—Section 205(e) is amended by striking out "and 1985" each place it appears and inserting in lieu thereof "1985, 1986, 1987, 1988, 1989, and 1990".

(2) TERRITORIES.—The first sentence of section 205(e) is amended—

(A) by inserting "the Commonwealth of the Northern Mariana Islands," after "Samoa,";

(B) by striking out "thirty-three one-hundredths of 1 per centum" and inserting in lieu thereof "two-thirds of one percent"; and

(C) by striking out "four" and inserting in lieu thereof "five".

(c) COSTS OF ADMINISTRATION.—Section 205(g)(1) is amended by striking out "1985" and inserting in lieu thereof "1990" and by striking out the period after "4 per centum" and inserting in lieu thereof a comma.

(d) INTERSTATE SANITARY COMMISSION.—Section 205(g) is amended by adding at the end thereof the following new paragraph:

"(3) On October 1 of each fiscal year beginning after September 30, 1985, the States of New York, New Jersey, and Connecticut shall pay to the Interstate Sanitation Commission established by such States by interstate compact, or shall enter into a legally binding agreement with such Commission to pay to such Commission, $900,000 (in the case of New York and New Jersey) and $200,000 (in the case of Connecticut) to carry out the functions of such Commission under this Act. If any such State does not make a payment, or enter into a legally binding agreement with respect to a payment, in the amount required under the preceding sentence for a fiscal year, the Administrator shall reserve, from the sums available to such State under this subsection for such fiscal year, an amount equal to the difference between the amount required to be paid or committed by such sentence for such fiscal year and the amount paid or committed by such State for such fiscal year. Sums so reserved shall be used by the Administrator to make a grant for such fiscal year to such Commission to carry out such functions.".

(e) RURAL SET ASIDE.—

(1) INCREASE IN MANDATORY SET ASIDE FOR RURAL STATES.—The first sentence of section 205(h) is amended by striking out "four per centum" and inserting in lieu thereof "a total (as determined by the Governor of the State) of not less than four percent nor more than seven and one-half percent".

(2) INCREASE IN AUTHORIZED SET ASIDE FOR OTHER STATES.—The second sentence of section 205(h) is amended by striking out "four per centum" and inserting in lieu thereof "seven and one-half percent".

(f) SET ASIDE FOR INNOVATIVE AND ALTERNATIVE PROCESSES AND TECHNIQUES.—Section 205(i) is amended by striking out "and September 30, 1985," and inserting in lieu thereof "September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990,".

(g) ALLOCATION OF PLANNING FUNDS TO REGIONAL ORGANIZATIONS.—Section 205(j)(3) is amended by adding at the end thereof the following: "In giving such priority, the State shall allocate at least 50 percent of the amount granted to such State for a fiscal year under this subsection to regional and interstate public comprehensive planning organizations in such State, except in any fiscal year for which the Administrator, after consultation with the Governor of such State and such organizations, determines that allocation of at least 50 percent to such organizations will not significantly assist in encouraging participation by such organizations in the development of wastewater treatment programs and significantly assist in achieving the goals of this Act.".

(h) Reservation of Funds for Investigations and Audits.—Section 205 is amended by adding at the end thereof the following new subsection:

"(l) Reservation for Investigations and Audits.—One-quarter of one percent of any amount appropriated under section 207 of this Act for any fiscal year beginning after September 30, 1985, shall be reserved by the Administrator for carrying out investigations and audits authorized by this Act of projects for which funds are made available under this title. Such sums shall be in addition to, and not in lieu of, any sums otherwise appropriated for or allocated to the Office of the Inspector General.".

SEC. 16. GRANTS TO STATES FOR ESTABLISHMENT OF WATER POLLUTION CONTROL REVOLVING FUNDS.

(a) In General.—Title II is amended by adding at the end thereof the following new section:

"SEC. 220. GRANTS TO STATES FOR ESTABLISHMENT OF REVOLVING FUNDS.

"(a) General Authority; Amount of Grant.—

"(1) General authority; construction assistance.—Subject to the provisions of this section, the Administrator shall make grants to each State for the purpose of establishing a revolving fund for providing assistance to municipalities and intermunicipal and interstate agencies for construction of treatment works (as defined in section 212 of this Act) which are publicly owned.

"(2) Amount of grant.—The amount of a grant to a State under this section for any fiscal year shall equal the amount allotted to such State under this section for such fiscal year.

"(b) General Grant Requirements.—

"(1) Deposits into revolving funds.—

"(A) Mandatory deposits.—A grant shall not be made for a fiscal year to a State under this section unless the State has first deposited in the revolving fund established by the State under this section from non-Federal sources an amount equal to 20 percent of the amount allotted to the State under this section for such fiscal year.

"(B) Discretionary deposits.—In addition to any amounts deposited in such revolving fund under subparagraph (A), the Governor of the State may deposit not to exceed 20 percent of the amount allotted to the State under section 205 of this Act for any fiscal year beginning after September 30, 1985, if the State has first deposited in such fund from non-Federal sources an amount equal to 20 percent of the amount to be deposited from such allotment.

"(2) Annual certification.—Each State shall submit to the Administrator annually a certification—

"(A) that upon completion of any project for treatments works for which financial assistance is made available from the revolving fund established by such State under this section, discharges from such treatment works will meet all applicable requirements necessary to achieve applicable State and Federal water quality standards; and

"(B) that such State will comply with all provisions of this section.

"(c) Forms of Revolving Fund Assistance.—Assistance described in subsection (a)(1) for construction of treatment works may only be provided from a revolving fund established under subsection (d)(1) in the form of a loan, loan guarantee, payment to reduce interest on a loan, bond interest subsidy, bond guarantee, or purchase of insurance for obligations. In addition, to the extent provided by State law, the State may issue revenue or general obligation bonds to finance projects for construction of treatment works described in subsection (a)(1) and on the State's priority list under section 216 using amounts in such fund as a source of revenue or security for the payment of interest and principal on such bonds, if the proceeds of the sale of such bonds are deposited in such fund.

"(d) State Water Pollution Control Revolving Funds.—

"(1) Establishment.—

"(A) Purposes.—Each State shall establish a Water Pollution Control Revolving Fund to provide assistance described in subsection (a)(1) for construction of treatment works.

"(B) State deposits.—The State shall deposit in such revolving fund any Federal funds allotted to the State under this section, any amounts received by the State for repayment of loans made by the State with amounts in such fund, any amounts required or authorized to be deposited in such fund under subsection (b)(1), and any additional funds (except for funds received under any other section of this title) which the State wishes to deposit in such fund.

"(2) Administrative expenses.—The State may use amounts in such revolving fund for the payment of expenses of administration of such fund; except that, in any fiscal year in which the State receives a grant under this section, the State may not use more than four percent of the amount of such grant for the payment of such expenses in such fiscal year.

"(3) Investments.—The State may invest any portion of the funds in such revolving fund which is not currently needed for providing assistance described in subsection (a)(1) and for payment of administrative expenses under paragraph (2).

"(4) Limitation to prevent double benefits.—If the State makes, from such revolving fund, a loan which will finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works, the State shall ensure that if the recipient of such loan receives a grant under section 201(g) of this Act for construction of such treatment works and an allowance under section 201(l)(1) for non-Federal funds expended for such planning and preparation, such recipient will promptly repay such loan to the extent of such allowance.

"(5) Eligibility of non-Federal portion of construction grant projects.—The State may provide assistance from such revolving fund to a municipality or intermunicipal or interstate agency with respect to the non-Federal share of the costs of a project for which such municipality or agency is receiving assistance from the Administrator under any other section of this title.

"(6) Dedicated source of revenue for loan repayment.—The State may only make a loan from such revolving fund to a municipality or intermunicipal or interstate agency if such municipality or agency first establishes a dedicated source of revenue for the repayment of such loan.

"(7) Priority list requirement.—The State may provide financial assistance from such revolving fund only with respect to a project for construction of a treatment *works described in subsection (a)(1) if such project is on the State's priority list under section 216 of this Act. Such assistance may be provided regardless of the rank of such project on such list.*

"(8) CONSISTENCY WITH PLANNING REQUIREMENTS.—The State may provide financial assistance from such revolving fund only with respect to a project which is consistent with plans, if any, developed under sections 205(j), 208, and 303(e) of this Act.

"(e) ADMINISTRATIVE PROVISIONS.—

"(1) STATE REPORTS.—Each State shall annually make a full and complete report to the Administrator concerning the use of funds deposited in the revolving fund established by such State under this section in such manner as the Administrator shall prescribe.

"(2) ANNUAL AUDITS.—The Administrator shall, at least on an annual basis, conduct or require each State to have independently conducted reviews and audits as may be deemed necessary or appropriate by the Administrator to carry out the objectives of this section. Audits of the use of funds deposited in the revolving fund established by such State shall be conducted in accordance with the auditing procedures of the General Accounting Office.

"(f) APPLICABILITY OF OTHER PROVISIONS.—Except to the extent provided in this section, the other provisions of this title shall not apply to grants under this section.

"(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section not to exceed $600,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, not to exceed $2,400,000,000 for the fiscal year ending September 30, 1991, not to exceed $1,800,000,000 for the fiscal year ending September 30, 1992, not to exceed $1,200,000,000 for the fiscal year ending September 30, 1993, and not to exceed $600,000,000 for the fiscal year ending September 30, 1994.

"(h) ALLOTMENT OF FUNDS.—

"(1) SAME FORMULA AS CONSTRUCTION GRANT ALLOTMENT.—Sums authorized to be appropriated to carry out this section for any fiscal year shall be allotted by the Administrator in the same manner and in accordance with the same table as the funds which are authorized to be appropriated under section 207 of this Act are allotted for such fiscal year.

"(2) EXCEPTION.—For any fiscal year for which sums are authorized to be appropriated to carry out this section and for which sums are not authorized to be appropriated to carry out section 207, the sums authorized to be appropriated to carry out this section shall be allotted by the Administrator in the same manner and in accordance with the same table as the funds which were authorized to be appropriated under section 207 were allotted for the most recent fiscal year for which there was such an authorization under section 207.

"(3) RESERVATION OF FUNDS FOR PLANNING.—Each State shall reserve each fiscal year one percent of the sums allotted to such State under this section for such fiscal year, or $100,000, whichever amount is greater, to carry out planning under sections 205(j), 208, and 303(e) of this Act.

"(4) REALLOTMENT.—

"(A) EXPIRATION OF PERIOD OF AVAILABILITY.—Sums allotted to a State under this subsection for a fiscal year shall remain available for a grant to such State for the fiscal year for which authorized and for the following two fiscal years. Any funds remaining after the last day of such third fiscal year shall be reallotted among the other States.

"(B) UNUTILIZED FUNDS.—Any funds granted to a State for a fiscal year under this section which are not utilized by such State for providing assistance described in subsection (a)(1) for construction of treatment works during such fiscal year and the following two fiscal years shall be repaid to the Administrator for reallotment among the other States.".

(b) CONFORMING AMENDMENT.—Section 207 is amended by striking out "and 209," and inserting in lieu thereof the following: "209, and 220 (except as provided in section 220(b)(1)(B)),".

SEC. 17. MODIFICATION FOR NONCONVENTIONAL POLLUTANTS.

(a) IN GENERAL.—Section 301(g) is amended by redesignating paragraph (2) (and any references thereto) as paragraph (3) and by striking out all that precedes subparagraph (A) of paragraph (1) and inserting in lieu thereof the following:

"(g)(1) The Administrator, with the concurrence of the State, may modify the requirements of subsection (b)(2)(A) of this section with respect to the discharge from any point source of ammonia, chlorine, color, iron, and total phenols (4AAP) (when determined by the Administrator to be a pollutant covered by subsection (b)(2)(F)). The Administrator may—

"(A) add any pollutant to the list of pollutants for which modification under this section is authorized (except for pollutants identified pursuant to section 304(a)(4) of this Act, toxic pollutants subject to section 307(a) of this Act, and the thermal component of discharges), if the Administrator determines that there are; or

"(B) remove any pollutant from such list if the Administrator determines that there are no longer;

satisfactory test methods and data available to make the determination required by paragraph (2).

"(2) A modification under this subsection shall be granted only upon a showing by the owner or operator of such point source satisfactory to the Administrator that—".

(b) APPLICATION; LIMITATION ON EFFECT.—The amendment made by subsection (a) shall apply to all requests for modifications under section 301(g) of the Federal Water Pollution Control Act pending on the date of the enactment of the Water Quality Renewal Act of 1985, and shall not have the effect of extending the deadline established in section 301(j)(1)(B) of such Act.

SEC. 18. DISCHARGES INTO MARINE WATERS.

(a) CONSIDERATION OF OTHER SOURCES OF POLLUTANTS.—Section 301(h)(2) is amended by striking out "such modified requirements will not interfere" and inserting in lieu thereof the following: "the discharge of pollutants in accordance with such modified requirements will not interfere, alone or in combination with pollutants from other sources,".

(b) LIMITATION ON SCOPE OF MONITORING.—Section 301(h)(3) is amended by inserting before the semicolon at the end thereof the following: ", and the scope of such monitoring is limited to include only those scientific investigations which are necessary to study the effects of the proposed discharge".

(c) Urban Area Pretreatment Program.—Section 301(h) is amended by redesignating paragraphs (6) and (7), and any references thereto, as paragraphs (7) and (8), respectively, and by inserting after paragraph (5) the following new paragraph:

"(6) in the case of any treatment works serving a population of 50,000 or more, with respect to any toxic pollutant introduced into such works by an industrial discharger for which pollutant there is no applicable pretreatment requirement in effect, the applicant has in effect a pretreatment program which, in combination with the treatment of discharges from such works, removes the same amount of such pollutant as would be removed if such works were to apply secondary treatment to discharges and if such works had no pretreatment program with respect to such pollutant;".

(d) Primary Treatment for Effluent.—Section 301(h) is amended by striking out the period at the end of paragraph (8) (as redesignated by subsection (c) of this section) and inserting in lieu thereof a semicolon and by inserting after such paragraph (8) the following new paragraph:

"(9) no effluent will be discharged from such works which does not receive primary treatment by screening, sedimentation, and skimming, and treatment for disinfection where necessary, and which does not meet the criteria established under section 304(a)(1) after initial mixing in the waters surrounding or adjacent to the point at which such effluent is discharged and".

(e) Urban Area Removal Credits.—Section 307(b)(1) is amended by adding at the end thereof the following: "In any case described in the preceding sentence in which the treatment works serves a population of 50,000 or more, such pretreatment standards shall be revised as provided in the preceding sentence if—

"(i) there exists an effluent limitation on such treatment works for the pollutant and the revised requirement will not result in the effluent violating such effluent limitations;

"(ii) the revised requirement will not result in interference with the method of disposal or reuse of sludge from the treatment works; and

"(iii) the revised requirement will not result in a pollutant interfering with the operation of such treatment works.".

(f) Discharge of Pollutant Into Marine Waters Defined.—Section 301(h) is amended by striking out the second sentence and inserting in lieu thereof the following: "For the purposes of this subsection, the phrase 'the discharge of any pollutant into marine waters' refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone.".

(g) Grandfather of Certain Applicants.—The amendments made by subsections (a), (c), (d), and (f) of this section shall not apply to any person whose application for a permit under section 301(h) of the Federal Water Pollution Control Act has been tentatively or finally approved by the Administrator on or before the date of the enactment of this Act.

SEC. 19. FILING DEADLINE FOR TREATMENT WORKS MODIFICATION.

(a) Elimination.—Section 301(i)(1) is amended by striking out the second sentence.

(b) Applicability.—The amendment made by subsection (a) shall not apply to those treatment works which are subject to a compliance schedule established before the date of the enactment of this Act by a court order or a final agency order.

SEC. 20. APPLICATION FOR OCEAN DISCHARGE MODIFICATIONS.

Section 301(j)(1)(A) is amended by inserting before the semicolon at the end thereof the following: ", except that a publicly owned treatment works which before December 31, 1982, had a contractual arrangement to use a portion of the capacity of an ocean outfall operated by another publicly owned treatment works which has applied for or received a modification under subsection (h) of this section, may apply for a modification of subsection (h) in its own right not later than 30 days after the date of the enactment of the Water Quality Renewal Act of 1985".

SEC. 21. INNOVATIVE TECHNOLOGY COMPLIANCE DEADLINES FOR DIRECT DISCHARGERS.

(a) Extension of Deadline.—Section 301(k) is amended by striking out "July 1, 1987," and inserting in lieu thereof "two years after the date for compliance with such effluent limitation which would otherwise be applicable under such subsection,".

(b) Extension to Conventional Pollutants.—Section 301(k) is amended by inserting "or (b)(2)(E)" after "(b)(2)(A)" each place it appears.

SEC. 22. VARIANCES FROM THE APPLICATION OF EFFLUENT LIMITATIONS AND PRETREATMENT STANDARDS.

(a) In General.—Section 301 is amended by adding at the end thereof the following new subsection:

"(n) Variances.—

"(1) Fundamentally different factors.—Upon application of any person who provides (or does not have a reasonable opportunity to provide) information to the Administrator in the rulemaking to establish or revise any effluent limitation under this section or section 304 of this Act or any national categorical pretreatment standard under section 307(b), the Administrator may grant a variance from the application of such limitation with respect to the discharge of any pollutant by such person or such standard with respect to the introduction of any pollutant by such person if the Administrator determines that factors relating to the facilities, equipment, and processes of such person or, in the case of such standard, factors relating to the facilities, equipment, and processes of the treatment works are fundamentally different than the factors considered in such rulemaking. An effluent limitation or pretreatment standard established under such variance may not be less stringent than is justified by the factors that are fundamentally different. A variance may not be granted under this subsection if it would produce a significantly adverse effect on the environment (other than on water quality).

"(2) Time limit for applications.—An application for a variance from the application of an effluent limitation or pretreatment standard under this subsection must be filed with the Administrator within 180 days after the date on which such limitation or standard is established or revised, as the case may be.

"(3) Time limit for decision.—The Administrator shall approve or deny any application filed under this subsection within 180 days after the date such application is filed with the Administrator.

"(4) Limitation on applicability.—This subsection shall only apply with respect to effluent limitations and pretreatment standards established or revised after the date of the enactment of this subsection.

"(5) EFFECT OF DENIAL OF APPLICATION.—If an application for a variance from the application of an effluent limitation or pretreatment standard under this subsection is denied by the Administrator, the applicant must comply with such limitation or standard as established or revised, as the case may be.

"(6) APPLICATION FEE.—The Administrator shall establish and collect a fee from each applicant for a variance under this subsection. Such fee shall be in an amount not more than an amount that reflects the reasonable administrative costs directly incurred in reviewing and processing applications for such variance. All amounts collected by the Administrator under this paragraph shall be deposited in the general fund of the Treasury.

"(7) REPORTS.—Every six months after the date of the enactment of this subsection, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives a report on the status of applications for variances from effluent limitations under section 301 or 304 of this Act or any national categorical pretreatment standard under section 307(b) of this Act filed before, on, or after such date of enactment.".

(b) SAVINGS CLAUSE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) shall not affect any procedures or requirements in effect before the date of the enactment of this Act with respect to the granting of variances from the application of effluent limitations and pretreatment standards established or revised on or before such date of enactment.

(2) EXCEPTIONS.—

(A) FACTOR TO BE CONSIDERED.—In deciding whether to deny or approve an application filed before the date of the enactment of this Act for a variance from an effluent limitation under section 301 or 304 of the Federal Water Pollution Control Act or any national categorical pretreatment standard under section 307(b) of such Act which has not been denied or approved on or before such date of enactment, the Administrator shall consider any requirements contained in effluent guidelines issued after the date of such filing.

(B) TIME LIMIT FOR DECISION.—The Administrator shall approve or deny any application referred to in subparagraph (A) within 180 days after such date of enactment; except that if the applicant amends such application to take into account any new effluent guidelines issued after the date of filing of such application, the Administrator shall deny or approve such amended application within 180 days after the date of such amendment.

SEC. 23. COAL REMINING OPERATIONS.

Section 301 is amended by adding at the end thereof the following:

"(o) MODIFIED PERMIT FOR COAL REMINING OPERATIONS.—

"(1) IN GENERAL.—Subject to paragraphs (2) through (4) of this subsection, the Administrator, or the State in any case which the State has an approved permit program under section 402(b), may issue a permit under section 402 which modifies the requirements of subsection (b)(2)(A) of this section with respect to the pH level of any pre-existing discharge, and with respect to pre-existing discharges of iron and manganese from the remined area of any coal remining operation or with respect to the pH level or level of iron or manganese in any pre-existing discharge affected by the remining operation. Such modified requirements shall apply the best available technology economically achieveable on a case-by-case basis, using best professional judgment, to set specific numerical effluent limitations in each permit.

"(2) LIMITATIONS.—The Administrator or the state may only issue a permit pursuant to paragraph (1) if the applicant demonstrates to the satisfaction of the Administrator or the State, as the case may be, that the coal remining operation will result in the potential for improved water quality from the remining operation but in no event shall such a permit allow the pH level of any discharge, and in no event shall such a permit allow the discharges of iron and manganese, to exceed the levels being discharged from the remined area before the coal remining operation begins. No discharge from, or affected by the remining operation shall exceed state water quality standards established under section 303 of this Act.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) the term 'coal remining operation' means a coal mining operation which begins after the date of enactment of this subsection at a site on which coal mining was conducted before the effective date of the Surface Mining Control and Reclamation Act of 1977;

"(B) the term 'remined area' means only that area of any coal remining operation on which coal mining was conducted before the effective date of the Surface Mining Control and Reclamation Act of 1977; and

"(C) the term 'pre-existing discharge' means any discharge at the time of permit application under this subsection.

"(4) APPLICABILITY OF STRIP MINING LAWS.—Nothing in this subsection shall affect the application of the Surface Mining Control and Reclamation Act of 1977 to any coal mining operation, including the application of such Act to suspended solids.".

SEC. 24. WATER QUALITY CRITERIA.

(a) IN GENERAL.—Section 304(a)(1) is amended by adding at the end thereof the following: "In developing, publishing, and revising criteria under this paragraph after the date of the enactment of this sentence, the Administrator shall consider, among other things, the effects on the ecosystem of (i) water hardness, (ii) pH, (iii) chemical and physical interactions, (iv) persistence of pollutants and the long-term effects of pollutants, (v) sedimentation from chemical reaction of pollutants, (vi) the absorptive properties of sediments, (vii) resuspension, and (viii) bio-uptake. New or revised criteria under this paragraph should be established so as to provide an ample margin of safety to protect human health and fish and wildlife resources. Whenever, in developing new or revised criteria under this paragraph with respect to a pollutant, the Administrator determines that a well-founded and significant difference of opinion exists as to the latest scientific and research knowledge on the matters referred to in the preceding sentence, the Administrator shall publish a description of such difference of opinion along with the publication of such criteria.".

(b) SENSE OF CONGRESS.—It is the sense of Congress that the Administrator and the States, in developing, publishing, and revising water quality criteria under section

304(a)(1) of the Federal Water Pollution Control Act should—

(1) consider the economic effects of implementation of the proposed water quality criteria;

(2) consider cyclical charges in the climate and environment; and

(3) take into account the recommendation of the concerned States and the findings and result of site specific and areawide research, tests, experiments, and demonstration programs conducted by the concerned States.

SEC. 25. TEST PROCEDURES.

Section 304(h) is amended by striking out ", within one hundred and eighty days from the date of enactment of this title," and inserting in lieu thereof ", within ninety days from the date of the enactment of the Water Quality Renewal Act of 1985,".

SEC. 26. PRETREATMENT STANDARDS.

(a) EXTENSION OF STANDARDS BY POTW APPLYING INNOVATIVE SYSTEM.—Section 307 is amended by adding at the end the following:

"(e) COMPLIANCE DATE EXTENSION FOR INNOVATIVE PRETREATMENT SYSTEMS.—In the case of any new or existing facility that proposes to comply with the pretreatment standards of subsection (b) of this section by applying an innovative system that meets the requirements of section 301(k) of this Act, the owner or operator of the publicly owned treatment works receiving the treated effluent from such facility may extend the date for compliance with the applicable pretreatment standard established under this section for a period not to exceed two years—

"(1) if the Administrator determines that the innovative system has the potential for industrywide application, and

"(2) if the Administrator (or the State, in any case in which the State has a pretreatment program approved by the Administrator)—

"(A) determines that the proposed extension will not cause the publicly owned treatment works to be in violation of its permit under section 402, and

"(B) concurs with the proposed extension.".

(b) INCREASE IN EPA EMPLOYEES.—The Administrator shall take such actions as may be necessary to increase the number of employees of the Environmental Protection Agency in order to effectively implement pretreatment requirements under section 307 of the Federal Water Pollution Control Act.

SEC. 27. INSPECTION AND ENTRY.

(a) IN GENERAL.—Section 308(b) is amended by striking out all that follows "Code" and inserting in lieu thereof a period and the following: "Any authorized representative of the Administrator (including an authorized contractor acting as a representative of the Administrator) who knowingly or willfully publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information which is required to be considered confidential under this subsection shall be fined not more than $1,000 or imprisoned not more than one year, or both. Nothing in this subsection shall prohibit the Administrator or an authorized representative of the Administrator (including any authorized contractor acting as a representative of the Administrator) from disclosing records, reports, or information to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act.".

(b) CONFORMING AMENDMENT.—Section 308(a)(B) is amended by inserting "(including an authorized contractor acting as a representative of the Administrator)" after "or his authorized representative".

SEC. 28. CRIMINAL PENALTIES.

(a) IN GENERAL.—Section 309(c) is amended to read as follows:

"(c) CRIMINAL PENALTIES.—

"(1) NEGLIGENT VIOLATIONS.—Any person who—

"(A) negligently violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army, acting through the Chief of Engineers, or by a State; or

"(B) negligently introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage or which causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State;

shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment of not more than two years, or by both.

"(2) KNOWING VIOLATIONS.—Any person who—

"(A) knowingly violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army, acting through the Chief of Engineers, or by a State; or

"(B) knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage or which causes such treatment works to violate any effluent limitation or condition in a permit issued to the treatment works under section 402 of this Act by the Administrator or a State;

shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $100,000 per day of violation, or by imprisonment of not more than four years, or by both.

"(3) KNOWING ENDANGERMENT.—(A) Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or in a permit *issued under section 404 of this Act by the Secretary of the Army or by a State, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than fifteen years, or both. A defendant that is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than $1,000,000.*

"(B) For the purpose of subparagraph (A) of this paragraph—

"(i) in determining whether a defendant who is an individual knew that his conduct placed another person in imminent danger of death or serious bodily injury—

"(I) the person is responsible only for actual awareness or actual belief that he possessed; and

"(II) knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant;

except that in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information;

"(ii) it is an affirmative defense to prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

"(I) an occupation, a business, or a profession; or

"(II) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent;

and such defense must be established by a preponderance of the evidence;

"(iii) the term 'organization' means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons; and

"(iv) the term 'serious bodily injury' means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss of impairment of the function of a bodily member, organ, or mental faculty.

"(4) COMPLIANCE AS AFFIRMATIVE DEFENSE.—It shall be an affirmative defense under paragraphs (1)(B) and (2)(B) of this subsection that the introduction of any pollutant or hazardous substance into a sewer system or a publicly owned treatment works was in compliance with all applicable Federal, State, and local requirements which govern the introduction of a pollutant or hazardous substance into a sewer or publicly owned treatment works.

"(5) FALSE STATEMENTS.—Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than four years, or by both.

"(6) RESPONSIBLE CORPORATE OFFICER AS 'PERSON'.—For the purpose of this subsection, the term 'person' means, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.

"(7) HAZARDOUS SUBSTANCE DEFINED.—For the purpose of this subsection, the term 'hazardous substance' means (A) any substance designated pursuant to section 311(b)(2)(A) of this Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of this Act, and (E) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.".

(b) CONFORMING AMENDMENT.—Section 404(s)(4) is repealed. Paragraph (5) of section 404(s) (and any references thereto) is redesignated as paragraph (4).

SEC. 29. CIVIL PENALTIES.

(a) INCREASE IN PENALTY.—Section 309(d) is amended by striking out "$10,000" and inserting in lieu thereof "$25,000".

(b) INCREASED PENALTIES NOT REQUIRED UNDER STATES PROGRAMS.—The Federal Water Pollution Control Act shall not be construed as requiring a State to have a civil penalty for violations described in such section 309(d) which has the same monetary amount as the civil penalty established by such section, as amended by subsection (a) of this section.

SEC. 30. ADMINISTRATIVE PENALTIES.

(a) IN GENERAL.—Section 309 is amended by adding at the end thereof the following:

"(g) ADMINISTRATIVE PENALTIES.—

"(1) IN GENERAL.—Whenever on the basis of any information available to him or her—

"(A) the Administrator finds that any person is in violation of section 301 (except as it relates to section 404 of this Act), 302, 306, 307, 318, or 405 of this Act, or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or

"(B) the Secretary of the Army, acting through the Chief of Engineers (hereinafter in this subsection referred to as the 'Secretary') finds that any person is in violation of section 301 of this Act (as it relates to section 404 of this Act) or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 404 of this Act by the Secretary or by a State,

the Administrator or Secretary, as the case may be, may, after consultation with the State in which the violation occurs, assess a civil penalty of not more than $10,000 per day of violation, except that such penalty shall not exceed a total of $125,000. The Administrator or the Secretary may not assess a civil penalty under this subsection against any person with respect to a violation if the

Administrator or Secretary, as the case may be, has assessed a civil penalty under this subsection against such person with respect to the same violation or a violation having substantially the same cause or arising out of substantially the same conditions.

"(2) ADMINISTRATIVE REQUIREMENTS.—

"(A) NOTICE AND OPPORTUNITY FOR HEARING.—A civil penalty shall be assessed under this subsection by the Administrator or Secretary, as the case may be, by an order made on the record after opportunity (provided in accordance with this subparagraph) for a hearing in accordance with section 554 of title 5, United States Code. Before issuing such an order, the Administrator or Secretary, as the case may be, shall—

"(i) give written notice to the person to be assessed a civil penalty under such order of the Administrator's or Secretary's proposal to issue such order and provide such person an opportunity to request, within 15 days of the date the notice is received by such person, such a hearing on the order; and

"(ii) provide public notice of and reasonable opportunity to comment on any proposed assessment.

"(B) NOTICE TO INTERESTED PERSONS.—Any person who comments on a proposed assessment shall be given notice of any hearing held under subparagraph (A) and any order assessing a penalty under this subsection. In any such hearing, such person shall have a reasonable opportunity to present evidence.

"(C) RIGHTS OF INTERESTED PERSONS TO A HEARING.—If no hearing is held before the issuance of an order assessing a penalty under this subsection, any person who commented on the proposed assessment may petition the Administrator or Secretary, as the case may be, to set aside such order and to provide a hearing on the penalty. The Administrator or Secretary shall set aside such order and provide such hearing in accordance with subparagraph (A) if the Administrator or Secretary determines that the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order. If the Administrator or Secretary denies a hearing under this subparagraph, the Administrator or Secretary shall provide to the petitioner, and publish in the Federal Register, notice of the reasons for such denial.

"(D) FACTORS TO CONSIDER IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a civil penalty, the Administrator or Secretary, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, economic savings (if any) resulting from the violation, and such other matters as justice may require.

"(E) FINALITY OF ORDER.—An order issued under this subsection shall become final 30 days after its issuance unless a petition for judicial review is filed under paragraph (3) or a hearing is requested under subparagraph (C). If such a hearing is denied, such order shall become final 30 days after such denial.

"(3) RIGHT OF INTERESTED PERSON TO APPEAL.—Any person who requested in accordance with paragraph (2)(A) or (2)(C) a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

"(4) RECOVERY OF UNPAID PENALTIES BY ATTORNEY GENERAL.—If any person fails to pay an assessment of a civil penalty—

"(A) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with paragraph (3), or

"(B) after a court in an action brought under paragraph (3) has entered a final judgment in favor of the Administrator or Secretary, as the case may be,

the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 30-day period referred to in paragraph (3) or the date of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in the first sentence of this paragraph shall be required to pay, in addition to such amount and interest, attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

"(5) SUBPOENAS.—The Administrator or Secretary, as the case may be, shall have the authority to issue subpoenas in connection with hearings under paragraph (2) of this subsection and may request the Attorney General to bring an action to enforce any subpoena under this subsection. The district courts shall have jurisdiction to enforce such subpoenas and impose sanctions.

"(6) EFFECT ON AUTHORITY OF ADMINISTRATOR.—Action taken by the Administrator or Secretary, as the case may be, pursuant to this subsection shall not affect or limit the Administrator's or Secretary's authority to enforce any provision of this Act, except that any violation with respect to which a civil penalty has been paid under this subsection shall not be subject to a civil penalty under section 309(d) or section 311(b) of this Act.

"(7) EFFECT OF STATE ENFORCEMENT ACTION.—When a State has proceeded with an enforcement action relating to a violation with respect to which the Administrator or Secretary is authorized to assess a civil penalty under this subsection, the Administrator or Secretary, as the case may be, are not authorized to take any action under this subsection if the State demonstrates that the State imposed penalty is appropriate.

"(8) EFFECT OF ADMINISTRATOR'S ACTION ON COMPLIANCE.—No action by the Administrator under this subsection shall affect any person's obligation to comply with any section of this Act or with the terms and conditions of any permit issued pursuant to section 402 or 404 of this Act.".

(b) CITIZEN SUITS.—Section 505(b)(1) is amended by striking out the period at the end of subparagraph (B) and inserting ", or" and by adding at the end the following:

"(C) if the Administrator or State has commenced and is diligently pursuing the assessment of a civil penalty for the alleged violation under section 309(g) of this Act or under a comparable State law, as the case may be.".

SEC. 31. RELATIONSHIP TO OTHER LAWS.

Section 311(r) is amended by adding at the end thereof the following: "Discharges from a deepwater port or from a vessel within a deepwater port safety zone which are subject to section 18 of the Deepwater Port Act of 1974 (33 U.S.C. 1517) shall not be subject to the liability and penalty provisions of this section.".

SEC. 32. MARINE SANITATION DEVICES.

Section 312(f)(1) of the Federal Water Pollution Control Act is amended by striking out "After" and inserting in lieu thereof "(A) Except as provided in subparagraph (B), after" and by adding at the end thereof the following:

"(B) A State may adopt or enforce a statute or regulation with respect to the design, manufacture, or installation or use of any marine sanitation device on a houseboat, if such statute or regulation is more stringent than the standards and regulations promulgated under this section. For purposes of this paragraph, the term 'houseboat' means a vessel which, for a period of time determined by the State in which the vessel is located, is used primarily as a residence and is not used primarily as a means of transportation.".

SEC. 33. CLEAN LAKES.

(a) APPLICATION OF PROGRAM TO SALINE LAKES.—Section 314(a)(1) is amended by striking out "fresh water".

(b) NONPOINT SOURCE GRANT PROGRAM; ANNUAL REPORT.—Section 314 is amended by adding at the end thereof the following new subsections:

"(d) PRIORITY PROJECTS FOR CONTROL OF NONPOINT SOURCES.—

"(1) GRANT PROGRAM.—The Administrator shall make grants to States for priority projects for control of nonpoint sources of pollution which are contributing to the degradation of water quality in lakes. The Administrator shall provide an equitable distribution of such sums to the States.

"(2) FEDERAL SHARE.—The amount granted to a State for a project under this subsection shall not exceed 70 per centum of the cost of such project.

"(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection not to exceed $50,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990. Sums appropriated shall remain available until expended.

"(e) ACIDITY MITIGATION PROGRAM.—

"(1) STATE SURVEYS AND PLANS.—Any State may prepare, and submit to the Administrator for his approval—

"(A) a survey of surface waters in such State in which water quality has deteriorated as a result of high acidity that may reasonably be due to acid deposition or acid mine drainage, and

"(B) methods and procedures that may be applied to mitigate the harmful effects of such acidity on such waters.

"(2) DESCRIPTION OF CERTAIN ELIGIBLE METHODS.—Methods which the Secretary may approve under this subsection may include, but are not limited to—

"(A) innovative methods of neutralizing and restoring buffering capacity of surface water, such as through the use of alkaline substances, that have become so acidic as to endanger game fish species, and

"(B) methods of removing from surface water toxic metals and other toxic substances mobilized by high acidity.

"(3) GRANTS.—The Administrator, in consultation with the Secretary of the Interior, shall make grants to States to carry out methods and procedures approved by the Administrator under this subsection.

"(4) FEDERAL SHARE.—The amount granted under this subsection to any State for any fiscal year shall not exceed 80 percent of the funds expended by such State in such year for carrying out approved methods and procedures under this subsection.

"(5) DISTRIBUTION OF FUNDS.—The Administrator shall provide for an equitable distribution of sums appropriated under this subsection among States with approved methods and procedures. Such distribution shall be based on the relative need of each such State for the mitigation of the harmful effects on surface waters of high acidity that may reasonably be due to acid deposition or acid mine drainage. The amount of any grant to a State under this subsection shall be in addition to, and not in lieu of, any other Federal financial assistance.

"(6) MONITORING AND ANNUAL REPORTS.—The Administrator and the Secretary of the Interior shall monitor and assess the effectiveness of the methods and procedures utilized by the States under this subsection and shall submit a report on such monitoring and assessment annually to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environmental and Public Works of the Senate.

"(7) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $25,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990. Amounts appropriated under this subsection shall remain available until expended.".

"(f) ANNUAL WATER QUALITY REPORT.—The Administrator shall submit annually to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the status and trend of water quality in lakes in the United States, including but not limited to, the nature and extent of pollution loading from point and nonpoint sources and the extent to which the use of lakes is impaired as a result of such pollution, particularly with respect to toxic pollution.".

(c) CONFORMING AMENDMENTS.—Section 314 is amended—

(1) in subsection (b), by striking out "this section" the first place it appears and inserting in lieu thereof "subsection (a) of this section";

(2) in subsection (c)(1), by striking out "this section" the first place it appears and inserting in lieu thereof "subsection (b) of this section" and by striking out "this section" the second place it appears and inserting in lieu thereof "subsection (a) of this section"; and

(3) in subsection (c)(2), by striking out "this section" the first place it appears and inserting in lieu thereof "subsection (b) of this section" and by striking out "this sec-

tion" the second place it appears and inserting in lieu thereof "subsection (a) of this section".

(d) CLEAN LAKES PROJECTS.—

(1) LAKE HOUSTON, TEXAS.—

(A) STUDY; CONTROL MEASURES.—The Administrator shall, in cooperation with the State of Texas, study water quality problems in Lake Houston, Houston, Texas, and undertake such control measures as the Administrator and State determine are necessary to improve water quality. Such study shall include, but not be limited to, the evaluation of the feasibility of regional or consolidated waste treatment facilities and the development of recommendations for the cost-effective control of pollutants entering the Lake Houston watershed.

(B) REPORT.—The Administrator shall submit a report on the results of such study and identify such structural or nonstructural controls which were undertaken or are proposed, along with recommendations for further measures, to improve the water quality of Lake Houston, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than one year after the date of the enactment of this Act.

(C) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal years beginning after September 30, 1985, $10,000,000 to carry out this paragraph, to remain available until expended.

(2) BEAVER LAKE, ARKANSAS.—

(A) STUDY.—The Administrator, in cooperation with the Secretary of the Army, acting through the Chief of Engineers, and in consultation with appropriate State and local agencies, shall conduct a one-year comprehensive study of the Beaver Lake, Arkansas, to identify measures which will optimize achievement of the purposes for which Beaver Dam was constructed while preserving and enhancing the quality of the reservoir's water.

(B) DEMONSTRATION PROJECT.—Upon completion of the study, the Administrator shall undertake a demonstration project at Beaver Lake to determine the effectiveness of measures identified in such study for preserving and enhancing the quality of the reservoir's water for current and future users.

(C) REPORT.—Upon completion of the demonstration project, the Administrator shall submit a report of such study and project, along with recommendations for further measures to improve the water quality of Beaver Lake, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(D) AVAILABILITY OF FUNDS.—Funds appropriated under subsections (c), (d), and (e) of section 314 of the Federal Water Pollution Control Act and under section 36 of this Act, relating to maintenance of water quality in estuaries, shall be available to carry out this paragraph.

(3) GREENWOOD LAKE AND BELCHER CREEK, NEW JERSEY.—

(A) DEMONSTRATION PROJECT.—The Administrator shall undertake a demonstration project for the removal of silt, stumps, and other obstructions from Greenwood Lake and Belcher Creek, New Jersey.

(B) REPORT.—Upon completion of the demonstration project, the Administrator shall submit a report on such project, along with recommendations for further measures to improve the water quality of Greenwood Lake and Belcher Creek, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(C) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $10,000,000 to carry out this paragraph.

(4) DEAL LAKE, NEW JERSEY.—

(A) DEMONSTRATION PROJECT.—The Administrator shall undertake a demonstration project for the removal of silt and stumps from, and the control of pollution from nonpoint sources in, Deal Lake, Monmouth County, New Jersey.

(B) REPORT.—Upon completion of the demonstration project, the Administrator shall submit a report on such project, along with recommendations for further measures to improve the water quality of Deal Lake, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(C) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $8,000,000 to carry out this paragraph.

(5) ALCYON LAKE, NEW JERSEY.—

(A) DEMONSTRATION PROJECT.—The Administrator shall undertake a demonstration project for the restoration of Alcyon Lake, New Jersey, including removal and disposal of contaminated sediments in the lake.

(B) REPORT.—Upon completion of the demonstration project, the Administrator shall submit a report on such project, along with recommendations of further measures to improve the water quality of Alcyon Lake, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(C) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $3,500,000 to carry out this paragraph.

(6) SAUK LAKE, MINNESOTA.—

(A) DEMONSTRATION PROJECT.—The Administrator shall undertake a demonstration project for the removal of silt and aquatic growth from Sauk Lake and its tributary streams in the vicinity of Sauk Centre, Stearns County, Minnesota.

(B) REPORT.—Upon completion of the demonstration project, the Administrator shall submit a report on such project, along with recommendations of further measures to improve the water quality of Sauk Lake, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(C) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $2,000,000 to carry out this paragraph.

(7) LAKE WORTH, TEXAS.—

(A) DEMONSTRATION PROJECT.—The Administrator shall undertake a demonstration project to remove silt and aquatic growth from Lake Worth, Tarrant County, Texas, including constructing silt traps and providing other devices or equipment to prevent and abate the further deposit of sediment in Lake Worth. Such project shall also provide for the use of dredged material in the reclamation of despoiled land. The Administrator may take such other actions as may be necessary to carry out such project.

(B) REPORT.—Upon completion of the demonstration project, the Administrator shall submit a report on such project, along with recommendations of further measures to improve the water quality of Lake Worth, to *the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.*

(C) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $1,750,000 to carry out this paragraph.

SEC. 34. NPDES PERMITS.

(a) Permit Requirements.—

(1) Terms.—Section 402(b)(1)(B) is amended to read as follows:

"(B) are for fixed terms not exceeding five years, or for a fixed term not exceeding ten years in any case in which the State determines (in accordance with regulations established by the Administrator) that the applicant has consistently complied with any permit held by such applicant under this section and that—

"(i) pollutants described in subparagraphs (C), (D), and (F) (except for any pollutant for which a modification is authorized under section 301(g) of this Act) of section 301(b)(2) are not detectable in the effluent to which the permit will apply; or

"(ii) such pollutants are present in such effluent only in trace amounts and are neither causing nor are likely to cause toxic effects, alone or in combination with pollutants from other sources;".

(2) Compliance with new toxic limitations and water quality standards.—Section 402(b)(1) is amended by redesignating subparagraph (D) as subparagraph (F) and by inserting after subparagraph (C) the following:

"(D) in the case of any permit issued for a fixed term exceeding five years, must be modified promptly to ensure compliance with any new or revised effluent limitation under section 307(a) of this Act or any new or revised requirement pursuant to a standard under section 303 of this Act which limitation or requirement is more stringent than the existing effluent limitation or requirement in the permit or which controls a pollutant not controlled in the permit;

"(E) in the case of any permit issued for a fixed term exceeding 5 years, can be modified to ensure compliance with—

"(i) any new or revised effluent limitation under section 301, 302, or 304 of this Act,

"(ii) any new or revised pretreatment standard under section 307(b) of this Act,

"(iii) any new or revised guideline under section 403 of this Act, or

"(iv) any new or revised regulation governing the disposal of sewage sludge under section 405 of this Act,

which limitation, standard, guideline, or regulation is more stringent than the existing effluent limitation, pretreatment standard, guideline, or regulation in the permit or which controls a pollutant not controlled in the permit; and".

(b) Exemption From Permit of Certain Stormwater Runoff.—

(1) In general.—Section 402(l) is amended by inserting "(1)" after "(l)" and by adding at the end thereof the following:

"(2) The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require such a permit, for discharges of stormwater runoff from mining operations or oil or gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which do not come into contact with any overburden, raw material, intermediate product, finished product, by-product, or waste product located on the site of such operations. Any person discharging stormwater runoff not described in the preceding sentence from mining operations or oil or gas exploration, production, processing, or treatment operations or transmission facilities shall monitor the quality of water in such flows and shall report not less often than annually to the Administrator, or at such intervals as the Administrator or the State deems appropriate.

"(3)(A) The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require such a permit for discharges composed entirely of stormwater runoff unless the Administrator determines, in the case of a class or category of such discharges, that such class or category may be a significant contributor of pollutants to the navigable waters or, in the case of a particular discharge, that such discharge violates a water quality standard or is a significant contributor of pollutants to the navigable waters.

"(B) This paragraph shall not apply to discharges referred to in paragraph (2) of this subsection, agricultural stormwater discharges, or to discharges from municipal separate storm sewers. A permit issued under this section may cover one or more than one municipal separate storm sewer.

"(C) Not later than one year after the date of the enactment of this paragraph, the Administrator shall promulgate interim final regulations identifying the classes and categories of industrial discharges for which permits are required in accordance with subparagraph (A). As soon as possible, but not later than six months, after completion of the study required by section 26(b)(2) of the Water Quality Renewal Act of 1985 (relating to NPDES permits), the Administrator shall issue such final regulations as necessary to take into account the results of such study.

"(D) Nothing in this paragraph shall effect any permit for a stormwater discharge in effect on the date of the enactment of this paragraph.

"(E) This paragraph shall apply during the period beginning on the date of the enactment of this paragraph and ending on December 31, 1989.".

(2) Study.—The Administrator shall study methods of regulating stormwater discharges. Such study shall include, but need not be limited to—

(A) an identification of the classes and categories of dischargers which have not been required to obtain permits under section 402(l)(3) of the Federal Water Pollution Control Act;

(B) a determination of the nature and extent of pollutants in the discharge of such dischargers; and

(C) a determination of procedures and methods to control such pollutants.

Not later than December 31, 1987, the Administrator shall submit to Congress a report on the results of such study along with recommendations on the most effective methods of regulating stormwater discharges.

(c) Additional Pretreatment of Conventional Pollutants Not Required.—Section 402 is amended by adding at the end thereof the following new subsection:

"(m) Additional Pretreatment of Conventional Pollutants Not Required.—To the extent a treatment works (as defined in section 212 of this Act) which is publicly owned is not meeting the requirements of a permit issued under this section for such treatment works as a result of inadequate design or operation of such treatment works, the Administrator, in issuing a permit under this section, shall not require pretreatment by a person introducing conventional pollutants identified pursuant to section 304(a)(4) of this Act into such treatment works other than pretreatment required to assure compliance with pretreatment standards under subsection (b)(8) of this section and section 307(b)(1) of this Act. Nothing in this subsection shall affect the Administrator's authority under sections 307 and 309 of this Act, affect State and local authority under sections 307(b)(4) and 510 of this Act, relieve such treatment works of its obligations to meet requirements established under this Act, or otherwise preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.".

(d) Partial Permit Program.—Section 402 is amended by adding at the end the following:

"(n) Partial Permit Program.—

"(1) State submission.—The Governor of a State may submit under subsection (b) of this section a permit program for a portion of the discharges into the navigable waters in such State.

"(2) Minimum coverage.—A partial permit program under this subsection shall cover at a minimum administration of a major category of the discharges into the navigable waters of the State or a major component of the permit program required by subsection (b).

"(3) Approval of partial permit program.—The Administrator may approve a partial permit program covering administration of a major category of discharges under this subsection if—

"(A) such program represents a complete permit program and covers all of the discharges under the jurisdiction of a department or agency of the State; and

"(B) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b).

"(4) Approval of partial and phased permit program.—The Administrator may approve under this subsection a partial and phased permit program covering administration of a major component (including discharge categories) of a State permit program required by subsection (b) if—

"(A) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b); and

"(B) the State submits, and the Administrator approves, a plan for the State to assume administration by phases of the remainder of the State program required by subsection (b) by a specified date not more than five years after submission of the partial program under this subsection and agrees to make all reasonable efforts to assume such administration by such date.".

(e) Return of State Permit Program to Administrator.—

(1) In general.—Section 402(c) is amended by adding at the end thereof the following new paragraph:

"(4) A State may return administration of its permit program to the Administrator, and the Administrator may withdraw approval of a State permit program under paragraph (3) of this subsection—

"(A) in the case of any approval under subsection (n)(3), the entire permit program being administered by the State department or agency at the time of such return or withdrawal, as the case may be; or

"(B) in the case of any approval under subsection (n)(4), any phased component of the permit program approved at the time of such return or withdrawal, as the case may be.".

(2) Technical amendment.—Section 402(c)(1) is amended by striking out "as to those navigable waters" and inserting in lieu thereof "as to those discharges".

(f) Log Transfer Facilities.—Section 402 is amended by adding at the end thereof the following new subsection:

(o) Log Transfer Facilities.—

(1) General rule.—A log transfer facility which is required (but for this subsection) to have a permit under both this section and section 404 and with respect to which a permit under section 404 has been issued shall not be required to submit a new application for a permit under section 402.

(2) Determination of compliance with 402 requirements.—The Administrator shall determine, after notice and an opportunity for a public hearing, whether a permit under section 404 with respect to a log transfer facility satisfies the applicable requirements of section 301, 302, 306, 307, 308, and 403 of this Act. If the Administrator determines that the terms of such permit satisfy such requirements, a separate application for a permit under this section shall not be required. If the Administrator determines that such terms fail to satisfy such requirements, the Administrator may propose to the Secretary of the Army modifications to such permit to incorporate such requirements. If such permit is not modified or issued to incorporate such requirements, the Administrator shall require issuance of a permit under this section for such facility.

"(3) Definition.—For purposes of this subsection, the term 'log transfer facility' means a facility which is constructed, in whole or part, in waters of the United States and which is utilized for the purpose of transferring commercially harvested logs to or from a vessel or log raft.".

(g) Anti-Backsliding.—

(1) In general.—Section 402 is amended by adding at the end thereof the following new subsection:

"(p) Anti-Backsliding.—

"(1) General prohibition for BPJ and water quality based permits.—Except as provided in paragraph (2)—

"(A) a permit issued under subsection (a)(1)(B) of this section which contains an effluent limitation applicable to a pollutant, and

"(B) a permit issued under this section which contains an effluent limitation applicable to a pollutant and established on the basis of section 301(b)(1)(C) or 303(d),

may not be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to such pollutant.

"(2) Exception.—A permit described in paragraph (1) may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant if—

"(A) material and substantial alterations or additions to the permitted facility or activity occurred after permit issuance which justify the application of a less stringent effluent limitation;

"(B) information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the applicaiton of a less stringent effluent application at the time of permit issuance;

"(C) good cause exists for a less stringent effluent limitation, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy;

"(D) the permittee has filed a request for a variance under section 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a);

"(E) the permittee demonstrates that operation and maintenance costs of the permitted facility are totally disproportionate to the operation and maintenance costs considered in the development of effluent limitations promulgated after the issuance of the permit;

"(F) the Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under subsection (a)(1)(B); or

"(G) the permittee has installed the equipment and facilities required to meet such effluent limitation and has properly operated and maintained such equipment and facilities and has not been able to achieve the effluent limitation.

"(3) LIMITATIONS.—In no event may a permit described in paragraph (1) be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may a permit described in paragraph (1)(B) to discharge into waters be renewed, reissued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under section 303 applicable to such waters.

"(4) EFFECTIVE PERIOD.—This subsection shall be in effect during the period of two years and six months beginning on the date of the enactment of this subsection.".

(2) REPORT.—The Administrator shall study the extent to which States have reviewed, revised, and adopted water quality standards in accordance with section 24 of the Municipal Wastewater Treatment Construction Grant Amendments of 1981 and the extent to which modifications of permits issued under section 402(a)(1)(B) of the Federal Water Pollution Control Act to permit less stringent effluent limitations should be allowed. The Administrator shall submit a report of such study, together with recommendations to Congress not later than two years after the date of the enactment of this Act.

(3) CONFORMING AMENDMENT.—Section 402(a)(1) is amended by inserting "(A)" after "either" and by inserting "(B)" after "this act, or".

SEC. 35. AUDITS.

Section 501(d) is amended by inserting at the end thereof the following new sentences: "For the purpose of carrying out audits and examinations with respect to recipients of Federal assistance under this Act, the Administrator is authorized to enter into noncompetitive procurement contracts with State audit organizations. Such contracts may only be entered into to the extent and in such amounts as may be provided in advance in appropriation Acts.".

SEC. 36. COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.

(a) DEFINED AS A STATE.—Section 502(3) is amended by inserting "the Commonwealth of the Northern Mariana Islands," after "Samoa,".

(b) DEFINED AS PART OF UNITED STATES.—Section 311(a)(5) is amended by striking out "the Canal Zone," and inserting in lieu thereof "the Commonwealth of the Northern Mariana Islands,".

SEC. 37. AGRICULTURAL STORMWATER DISCHARGES.

Section 502(14) (relating to the definition of point source) is amended by inserting after "does not include" the following: "agricultural stormwater discharges and".

SEC. 38. CITIZEN SUITS.

Section 505(c) is amended by adding at the end thereof the following new paragraph:

"(3) Whenever any action is brought under this section in a court of the United States, the plaintiff shall serve a copy of the complaint on the Attorney General and the Administrator. No consent judgment shall be entered in an action in which the United States is not a party prior to forty-five days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator. No judgment in any action to which the United States is not a party shall have any binding effect upon the United States.".

SEC. 39. REPORTS TO CONGRESS.

Section 516 is amended by adding at the end thereof the following new subsections:

"(f) DAM DISCHARGE STUDY.—The Administrator, in cooperation with interested States and Federal agencies, shall study and monitor the effects on the quality of navigable waters attributable to the impoundment and discharge of water by dams. The results of such study, together with any recommendations for the control of such impoundment and discharge, shall be submitted to Congress not later than December 31, 1986.

"(g) STATE REVOLVING FUND REPORT.—

"(1) IN GENERAL.—Not later than February 10, 1990, the Administrator shall submit to Congress a report on the financial status and operations of Water Pollution Control Revolving Funds established by the States under section 220 of this Act. The Administrator shall prepare such report in cooperation with the States, including water pollution control agencies and other water pollution control planning and financing agencies.

"(2) CONTENTS.—The report under this subsection shall also include the following:

"(A) an inventory of the facilities that are in significant noncompliance with the enforceable requirements of this Act;

"(B) an estimate of the cost of construction necessary to bring such facilities into compliance with such requirements;

"(C) an assessment of the availability of sources of funds for financing such needed constructon, including an estimate of the amount of funds available for providing assistance for such construction through September 30, 1999, from the Water Pollution Control Revolving Funds established by the States under section 220 of this Act;

"(D) an assessment of the operations, loan portfolio, and loan conditions of such Funds;

"(E) an assessment of the effect on user charges of the assistance provided by such Funds compared to the assistance provided with funds appropriated pursuant to section 207 of this Act; and

"(F) an assessment of the efficiency of the operation and maintenance of treatment works constructed with assistance provided by such Funds compared to the efficiency of the operation and maintenance of treatment works constructed with assistance provided under section 201 of this Act.".

SEC. 40. INDIAN TRIBES.

Title V is amended by redesignating section 518, and any references thereto, as section 519 and by inserting after section 517 the following:

"SEC. 518. INDIAN TRIBES.

"(a) ASSESSMENT OF SEWAGE TREATMENT NEEDS; REPORT.—The Administrator, in cooperation with the Director of the Indian Health Service, shall assess the need for sewage treatment works to serve Indian tribes, the degree to which such needs will be met through funds allotted to States under section 205 of this Act and priority lists under section 216 of this Act, and any obstacles which prevent such needs from being met. Not later than one year after the date of the enactment of this section, the Administrator shall submit a report to Congress on the assessment under this subsection, along with recommendations specifying (1) how the Administrator intends to provide assistance to Indian tribes to develop waste treatment management plans and to construct treatment works under this Act, and (2) methods by which the participation in and administration of programs under this Act by Indian tribes can be maximized.

"(b) RESERVATION OF FUNDS.—The Administrator shall reserve each fiscal year beginning after September 30, 1986, before allotments to the States under section 205(e), such amount as the Administrator determines appropriate based on the determination of unmet needs reported under subsection (a), but not less than one-half of one percent of the sums appropriated under section 207. Sums reserved under this subsection shall be available only for grants for the development of waste treatment management plans and for the construction of sewage treatment works to serve Indian tribes.

"(c) COOPERATIVE AGREEMENTS.—In order to ensure the consistent implementation of the requirements of this Act, an Indian tribe and the State or States in which the lands of such tribe are located may enter into a cooperative agreement, subject to the review and approval of the Administrator, to jointly plan and administer the requirements of this Act.

"(d) TREATMENT AS STATES.—The Administrator is authorized to treat an Indian tribe as a State for purposes of title II and sections 104, 106, 303, 305, 308, 309, 314, 319, 402, and 404 of this Act to the degree necessary to carry out the objectives of this section, but only if—

"(1) the Indian tribe has a governing body carrying out substantial governmental duties and powers;

"(2) the functions to be exercised by the Indian tribe pertain to the management and protection of water resources which are held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation; and

"(3) the Indian tribe is reasonably expected to be capable, in the Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this Act and of all applicable regulations. Such treatment as a State may include the direct provision of funds reserved under subsection (b) to the governing bodies of Indian tribes, and the determination of priorities by Indian tribes, where not determined by the Administrator in cooperation with the Director of the Indian Health Service. The Administrator, in cooperation with the Director of the Indian Health Service, is authorized to make grants under title II of this Act in an amount not to exceed 100 percent of the cost of a project. Not later than 18 months after the date of the enactment of this section, the Administrator shall, in consultation with Indian tribes, promulgate final regulations which specify how Indian tribes shall be treated as States for purposes of this Act. The Administrator shall, in promulgating such regulations, provide a mechansim for the resolution of any unreasonable consequences that may arise as a result of differing water quality standards that may be set by States and Indian Tribes located on common bodies of water. Such mechanism should provide for the avoidance of such unreasonable consequences in a manner consistent with the objective of the Act.

"(e) GRANTS FOR NONPOINT SOURCE PROGRAMS.—The Administrator shall make grants to an Indian tribe under section 319 of this Act as though such tribes were a State. Not more than one-third of one percent of the amount appropriated for any fiscal year under section 319 may be used to make grants under this subsection. In addition to the requirements of section 319, an Indian tribe shall be required to meet the requirements of paragraphs (1), (2), and (3) of subsection (d) of this section in order to receive such a grant.

"(f) DEFINITIONS.—For purposes of this section, the term—

"(1) 'Federal Indian reservation' means all land within the limits of any Indian reservation under the jurisdicition of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; and

"(2) 'Indian tribe' means any Indian tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.".

SEC. 41. DEFINITION OF POINT SOURCE.

For purposes of the Federal Water Pollution Control Act, the term "point source" includes a landfill leachate collection system.

SEC. 42. CHESAPEAKE AND NARRAGANSETT BAYS.

(a) CHESAPEAKE BAY PROGRAM.—

(1) OFFICE.—The Administrator shall continue the Chesapeake Bay program and shall establish and maintain in the Environmental Protection Agency an office, division, or branch of Chesapeake Bay Programs to—

(A) collect and make available, through publications and other appropriate means, information pertaining to the environmental quality of the Chesapeake Bay (hereinafter in this subsection referred to as the "Bay");

(B) coordinate Federal and State efforts to improve the water quality of the Bay;

(C) determine the impact of sediment deposition in the Bay and identify the sources, rates, routes, and distribution patterns of such sediment deposition; and

(D) determine the impact of natural and man-induced environmental changes on the living resources of the Bay and the relation-

ships among such changes, with particular emphasis placed on the impact of pollutant loadings of nutrients, chlorine, acid precipitation, dissolved oxygen, and toxic pollutants, including organic chemicals and heavy metals, and with special attention given to the impact of such changes on striped bass.

(2) INTERSTATE DEVELOPMENT PLAN GRANTS.—The Administrator shall, at the request of the Governor of a State affected by the interstate management plan developed pursuant to the Chesapeake Bay program (hereinafter in this subsection referred to as the "plan"), make a grant for the purpose of implementing the management mechanisms contained in the plan if such State has, within one year after the date of the enactment of this section, approved and committed to implement all or substantially all aspects of the plan. Such grants shall be made subject to such terms and conditions as the Administrator considers appropriate.

(3) SUBMISSION OF PROPOSAL.—A State or combination of States may elect to avail itself of the benefits of paragraph (2) by submitting to the Administrator a proposal including the estimated cost of the abatement actions proposed to be taken during the next fiscal year. If the Administrator finds that such proposal is consistent with the national policies set forth in section 101(a) of the Federal Water Pollution Control Act and will contribute to the achievement of the national goals set forth in such section, he shall approve such proposal and shall finance the costs of implementing segments of such proposal.

(4) FEDERAL SHARE.—Grants under paragraph (2) shall not exceed 50 percent of the costs of implementing the proposed plan in any fiscal year and shall be made on condition that non-Federal sources provide the remainder of the cost of implementing the proposed plan during such fiscal year.

(5) ADMINISTRATIVE COSTS.—Administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against programs or projects supported by funds made available under paragraph (2) shall not exceed in any one fiscal year 10 percent of the annual grant made to a State under such paragraph.

(5) REPORTS.—Any State or combination of States that receives a grant under paragraph (2) shall, within 18 months after the date of receipt of such grant and biennially thereafter, report to the Administrator on the progress made in implementing the interstate management plan developed pursuant to the Chesapeake Bay program. The Administrator shall transmit each such report along with the comments of the Administrator on such report to Congress.

(b) NARRAGANSETT BAY PROGRAM.—

(1) GRANTS.—The Administrator shall, at the request of the Governor of an affected State and after consultation with the Administrator of the National Oceanic and Atmospheric Administration and other appropriate Federal and State agencies and interested persons, make a grant for purposes of assessing the principal factors having an adverse effect on the environmental quality of the Narragansett Bay (hereinafter in this subsection referred to as the "Bay"), a perceived by both scientists and users, in conjunction with developing and implementing a management program to improve the Bay's water quality. Payments for such purposes may be made to the States as hereinafter provided, subject to such terms and conditions as the Administrator considers appropriate.

(2) FEDERAL SHARE.—Grants under this paragraph shall not exceed 50 percent of the costs of implementing the plan in any fiscal year and shall be made on condition that non-Federal sources provide the remainder of the cost of implementing the plan during such fiscal year.

(3) APPROVAL OF APPLICATIONS.—A State may elect to avail itself of the benefits of this subsection by submitting to the Administrator a full and complete description of the program it proposes to establish and administer under State law. The Administrator shall approve each such submitted program, within three months of receipt of such program, if the applicant demonstrates to the satisfaction of the Administrator that the applicant will—

(A) establish a committee of representatives from various units of Federal, State, and local governments, research and educational institutions, and groups and individuals concerned with problems of water quality in the Bay to provide advice on the design and implementation of a management program and to coordinate communication on issues affecting the Bay's water quality;

(B) review and coordinate Federal and State water pollution abatement efforts that will most efficiently address those principal factors having an adverse effect on the Bay's water quality;

(C) undertake, subsequent to an analysis of all environmental sampling data presently being collected on the Bay, methods for improving such data collection, particularly with respect to toxic pollutants;

(D) establish a continuing capacity for collecting, storing, analyzing, and disseminating such data;

(E) institute a sampling program where deficiencies are found to exist in present sampling programs; and

(F) develop and, as soon as practicable but not later than three years after the date of the enactment of this section, implement management practices and measures (including land use requirements) to reduce to the greatest extent feasible pollutant loadings in the Bay and to improve the Bay's water quality.

(4) STATE REPORTS.—Any State that avails itself of the benfits of this subsection shall, not later than two years after receipt of a Federal grant under this subsection and annually thereafter, report to the Administrator on progress made in implementing a management program to improve the water quality of the Bay.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purposes of this section:

(1) \$3,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989 to carry out subsection (a)(1);

(2) \$10,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989, for grants to States under subsection (a)(2); and

(3) \$1,500,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989, to carry out subsection (b).

SEC. 43. NEW YORK AND NEW JERSEY HARBOR AREA.

(a) CLEARINGHOUSE, COORDINATION, AND STUDY FUNCTIONS.—The Administrator shall—

(1) collect and make available, through publications and other appropriate means, information pertaining to the environmental quality of the New York and New Jersey Harbor area (hereinafter in this subsection referred to at the "Harbor");

(2) coordinate Federal and State efforts to improve the water quality of the Harbor; and

(3) determine the impact of natural and man-induced environmental changes on the living resources of the Harbor and on adjacent coastal areas and the relationships among such changes, with particular emphasis placed on the impact of pollutant loadings of sewage, dissolved oxygen, and toxic pollutants, including organic chemicals and heavy metals.

(b) GRANTS FOR IMPLEMENTATION OF INTERSTATE MANAGEMENT PLAN.—The Administrator shall, at the request of the Governor of a State affected by any interstate management plan relating to the Harbor developed pursuant to section 33 of this Act (hereinafter in this subsection referred to as the "plan"), make a grant for the purpose of implementing the management mechanisms contained in the plan in accordance with such section.

(c) SUBMISSION OF PROPOSAL.—An affected State or combination of States may, in addition, submit to the Administrator a proposal including the estimated cost of the abatement actions proposed to be taken during the next fiscal year. If the Administrator finds that such proposal is consistent with the national policies set forth in section 101(a) of the Federal Water Pollution Control Act and will contribute to the achievement of the national goals set forth in such section, he shall approve such proposal and shall finance the costs of implementing segments of such proposal.

(d) FEDERAL SHARE OF GRANTS.—Grants under this section shall not exceed 50 percent of the costs of implementing the proposal in any fiscal year and shall be made on condition that non-Federal sources provide the remainder of the cost of implementing the proposal during such fiscal year.

(e) ADMINISTRATIVE COSTS.—Administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against programs or project supported by funds made available under this section shall not exceed in any one fiscal year 10 percent of the annual grant made to a State under this section.

(f) REPORTS.—Any State or combination of States that receives a grant under section 36 (relating to maintenance of water quality in estuaries) or this section shall, within 18 months after the date of receipt of such grant and biennially thereafter, report to the Administrator on the progress made in implementing the plan developed pursuant to such section 36 or this section. The Administrator shall transmit each such report along with the comments of the Administrator on such report to Congress.

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $10,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989, to carry out this section.

SEC. 44. SAN FRANCISCO BAY.

(a) INITIATION OF PROGRAM.—The Administrator shall initiate a San Francisco Bay program to—

(1) collect and make available, through publications and other appropriate means, information pertaining to the environmental quality of the San Francisco Bay (hereinafter in this section referred to as the "Bay");

(2) coordinate Federal, State and local efforts to improve the water quality of the Bay;

(3) establish a committee of representatives from various units of Federal, State, and local governments, research and education institutions, and groups and individuals concerned with problems of water quality in the Bay to provide advice on the development and implementation of such management program and to coordinate communication on issues affecting the Bay's water quality;

(4) determine the impact of natural and man-induced environmental changes on the living resources of the Bay and the relationships among such changes, with particular emphasis placed on the impact of pollutant loadings and toxic pollutants, including organic chemicals and heavy metals, and with special attention given to the impact of such changes on water quality and natural resources such as striped bass.

(5) develop a management plan that shall contain management practices and measures to reduce to the greatest extent feasible pollutant loadings in the Bay and to improve the Bay's water quality.

(b) GRANTS.—The Administrator shall, make a grant to the State of California for the purpose of implementing the management mechanisms contained in the management plan developed under subsection (a)(5), if such State has, within one year after the date of the enactment of this section, approved and committed to implement all or substantially all aspects of the plan. Such grants shall be made subject to such terms and conditions as the Administrator considers appropriate.

(c) SUBMISSION OF PROPOSAL.—The State of California may elect to avail itself of the benefits of this section by submitting to the Administrator a proposed plan including the estimated cost of the abatement actions proposed to be taken during the next fiscal year. If the Administrator finds that such proposal is consistent with the national policies set forth in section 101(a) of the Federal Water Pollution Control Act and will contribute to the achievement of the national goals set forth in such section, he shall approve such proposal and shall finance the costs of implementing segments of such proposal; except that Federal grants under this section shall not exceed 50 percent of the cost of implementing the proposed plan in any fiscal year and shall be made on condition that non-Federal sources provide the remainder of the cost of implementing the plan during such fiscal year.

(d) ADMINISTRATIVE COSTS.—Administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against programs of projects supported by funds made available under this section shall not exceed in any one fiscal year 10 percent of the annual Federal grant made under this section.

(e) REPORTS.—The State of California shall, within 18 months after the date of receipt of such grant and biennially thereafter, report to the Administrator on the progress made in implementing the inter-

state management plan developed pursuant to the San Francisco Bay program. The Administrator shall transmit each such report along with the comments of the Administrator on such report to Congress.

(f) Authorization of Appropriations.—There is authorized to be appropriated to carry out this section, to remain available until expended, $3,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989.

SEC. 45. MAINTENANCE OF WATER QUALITY IN ESTUARIES.

(a) Purposes and Policies.—

(1) Findings.—Congress finds and declares that:

(A) the Nation's estuaries are of great importance for fish and wildlife resources and recreation and economic opportunity;

(B) maintaining the health and ecological integrity of these estuaries is in the national interest;

(C) increasing coastal population, development, and other direct and indirect uses of these estuaries threaten their health and ecological integrity;

(D) long-term planning and management will contribute to the continued productivity of these areas, and will maximize their utility to the Nation; and

(E) better coordination among Federal and State programs affecting estuaries will increase the effectiveness and efficiency of the national effort to protect, preserve, and restore these areas.

(2) Purposes.—The purposes of this section are to—

(A) identify nationally significant estuaries that are threatened by pollution, development, or overuse;

(B) promote comprehensive planning for, and conservation and management of, nationally significant estuaries;

(C) encourage the preparation of management plans for estuaries of national significance; and

(D) enhance the coordination of estuarine research.

(b) Management Conference.—

(1) Nomination of estuaries.—The Governor of any State may nominate to the Administrator an estuary lying in whole or in part within the State as an estuary of national significance and request a management conference to develop a comprehensive management plan for the estuary. The nomination shall document the need for the conference, the likelihood of success, and information relating to the factors in paragraph (2).

(2) Convening of conference.—

(A) In general.—In any case where the Administrator, in consultation with the Secretary of Commerce, determines, on his own initiative or upon nomination of a State under paragraph (1), that the attainment or maintenance of that water quality in an estuary which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water, requires the control of point and nonpoint sources of pollution in more than one State, the Administrator shall select such estuary and convene a management conference.

(B) Basis for selection.—The selection of an estuary under subparagraph (A) shall be based upon—

(i) the ecological significance of the estuary;

(ii) the biological productivity of the estuary and its contribution to fish and wildlife resources of commercial and recreational significance;

(iii) the degree to which commercial, residential, recreational, or industrial activities within the estuary and its watershed have impaired or may impair the health and ecological integrity of the estuary; and

(iv) the degree to which comprehensive planning and management may contribute significantly to the wise use of the estuary and to its health and ecological integrity.

(C) Priority consideration.—The Administrator shall give priority consideration under this section to Long Island Sound; Buzzards Bay, Massachusetts; Delaware Bay, Delaware and New Jersey; Albemarle Sound, North Carolina; and Sarasota Bay, Florida.

(3) Boundary dispute exception.—In any case in which a boundary between two States passes through an estuary and such boundary is disputed and is the subject of an action in any court, the Administrator shall not convene a management conference with respect to such estuary before a final adjudication has been made of such dispute.

(4) Existing management program exception.—Notwithstanding any other provision of this section, the Administrator shall not convene a management conference with respect to an estuary if he determines that there exists a management program for the estuarine zone of such estuary with sufficient authority to achieve the purpose of this section.

(c) Members of Conference; Lead Agency.—The members of a conference under this section shall include the Administrator, the Administrator of the National Oceanic and Atmospheric Administration, a representative of each of those States which are located, in whole or in part, within the estuarine zone of the estuary for which the conference is convened, a representative of each interested Federal agency as determined appropriate by the Administrator, a representative of any interstate agency having jurisdiction over all or a significant part of the estuary, and representatives of local governments within the estuarine zone as deemed appropriate by the Administrator. In any case in which an interstate agency has jurisdiction over all or a significant part of the estuary, such agency shall be the lead agency for purposes of carrying out this section.

(d) Purposes of Conference.—The purposes of any mangement conference convened with respect to an estuary under this subsection shall be—

(1) to develop a comprehensive master plan for such estuary in accordance with subsection (e) that will restore and maintain the health and ecological integrity of the estuary;

(2) to coordinate the implementation of the master plan by the States participating in the conference; and

(3) to monitor the estuary to determine the effectiveness of actions taken pursuant to the master plan.

(e) Master Plan.—

(1) Contents.—The master plan developed pursuant to paragraph (1) of subsection (d) shall be developed in coordination with any relevant special area management plan under the Coastal Zone Management Act. Such plan shall include priority corrective actions and compliance schedules to address point and nonpoint sources of pollution

posing the most serious problems to the estuary's physical, chemical, and biological intergrity. Such actions may include, but need not be limited to any of the following standards and practices which are necessary for the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water:

(A) development of water quality standards for waters within the estuarine zone;

(B) development of toxicity-based standards for toxic pollutants;

(C) development of water quality based effluent standards for significant point sources of pollution;

(D) development of best management practices to control nonpoint sources of pollution; and

(E) other measures providing for the conservation and management of the living resources of the estuary.

(2) UTILIZATION OF EXISTING DATA.—In developing a master plan under this section, the management conference shall survey and utilize existing reports, data, and studies relating to the estuary that have been developed by or made available to Federal, interstate, State, or local agencies.

(f) PERIOD OF CONFERENCE.—A management conference convened under this section shall be convened for at least four years. Such conference may be extended by the Administrator, and if terminated after the initial four-year period, may be reconvened by the Administrator at any time thereafter, as may be necessary to meet the requirements of this section.

(g) GRANTS FOR IMPLEMENTATION OF MASTER PLAN.—The Administrator is authorized to make grants to States and interstate agencies participating in a management conference which has adopted a comprehensive master plan pursuant to this section for the estuary which is the subject of such conference. The amount of the grants to any State or interstate agency for a fiscal year shall, subject to such amounts as are provided in appropriation acts, be equal to 50 percent of that State's or agency's cost of implementing the master plan for such fiscal year.

(h) PLAN APPROVAL.—At the conclusion of a management conference, the Administrator, in consultation with the Secretary of Commerce, and each participating governor shall review the comprehensive management plan for the estuary to determine if it meets the requirements of this section and, if so, shall approve the plan.

(i) RESEARCH.—

(1) RESEARCH TO ASSIST IN DEVELOPMENT OF PLAN.—Upon convening a management conference under this section, the Secretary and the Administrator, in conjunction with State and local authorities, shall undertake to develop, compile, and make available information and research relating to the estuary that would assist in developing and implementing the comprehensive management plan.

(2) RESEARCH PLAN.—The management conference may develop a research plan, which shall include research needs, priorities, and guidelines, to promote the coordination and utility of research relating to the estuary.

(3) ADVISORY COMMITTEES.—In developing a research plan under this subsection, the management conference shall establish advisory committees or other procedures to provide the interdiciplinary technical expertise necessary to address the range of issues requiring research.

(4) RESEARCH TO DETERMINE NEED FOR CONFERENCE.—The Secretary shall conduct such research as may be necessary to determine the need to convene a management conference under this section or as may be requested by a management conference. Such research shall comply with any applicable research plan under paragraph (2).

(j) DEFINITIONS.—For purposes of this section, the terms "estuary" and "estuarine zone" have the meanings such terms have in section 104(n)(4) of the Federal Water Pollution Control Act, except that the term "estuarine zone" shall also include those portions of tributaries draining into the estuary up to the historic height of migration of anadromous fish or the historic head of tidal influence, whichever is higher. For purposes of this section, the term "State" has the meaning such term has in section 502(3) of such Act.

(k) REPORT TO CONGRESS.—The Administrator, in consultation with the Secretary of Commerce, shall submit to Congress not later than January 1, 1987, and biennially thereafter a comprehensive report on the activities authorized under this section, which shall—

(1) list the priority monitoring and research needs for estuaries to meet the objectives of this section;

(2) assess the health of the Nation's estuaries evaluated under this section;

(3) discuss the pollution problems and trends that affect directly or indirectly the water quality, ecosystem, and existing or potential uses of each estuary evaluated under this section; and

(4) evaluate the effectiveness of pollution abatement activities and other management measures undertaken pursuant to this section.

(l) AUTHORIZATION OF APPROPRIATIONS.—

(1) GRANTS.—There is authorized to be appropriated to carry out this section not to exceed $13,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990. Amounts appropriated under this paragraph shall remain available until expended.

(2) OTHER EXPENSES.—There is authorized to be appropriated to the Administrator not to exceed $2,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, for—

(A) expenses related to the administration of management conferences under this section;

(B) grants to State water pollution control agencies, State coastal zone management agencies, interstate agencies, other public or nonprofit private agencies, institutions, organizations, and individuals for research, surveys, studies, and modeling and other technical work necessary for the development of a comprehensive master plan under this section; and

(C) monitoring the implementation of a comprehensive master plan by the management conference or by the Administrator in any case in which the conference has been terminated.

SEC. 46. RESEARCH ON EFFECTS OF POLLUTANTS.

(a) MATTERS INCLUDED.—In carrying out the provisions of section 104(a) of the Federal Water Pollution Control Act, the Adminis-

trator shall conduct research on the harmful effects on the health and welfare of persons caused by pollutants in water, in conjunction with the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and other Federal, State, and interstate agencies carrying on such research. Such research shall include, and shall place special emphasis on, the effect that bioaccumulation of these pollutants in aquatic species has upon reducing the value of aquatic commerical and sport industries. Such research shall further study methods to reduce and remove these pollutants from the relevant affected aquatic species so as to restore and enhance these valuable resources.

(b) Authorization of Appropriations.—There is authorized to be appropriated to carry out subsection (a) of this section not to exceed $2,500,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989.

SEC. 47. SEWAGE SLUDGE.

(a) Identification of Toxic Pollutants.—

(1) Six months.—Not later than six months after the date of the enactment of this Act, the Administrator shall identify those toxic pollutants which, on the basis of available information on their toxicity, persistence, concentration, mobility, or potential for exposure, may be present in sewage sludge in concentrations which may adversely affect human health or the environment.

(2) Eighteen months.—Not later than 18 months after the date of the enactment of this Act, the Administrator shall identify those toxic pollutants not identified under paragraph (1) which may be present in sewage sludge in concentrations which may adversely affect public health or the environment.

(b) Regulations.—

(1) For six-month pollutants.—Not later than 18 months after the date of the enactment of this Act, the Administrator shall publish regulations specifying acceptable management practices for sewage sludge containing each toxic pollutant identified under subsection (a)(1) and establishing numerical limitations for each such pollutant for each use of or disposal technique for sludge identified by the Administrator. Such regulations shall require compliance no later than six months after their publication.

(2) For eighteen-month pollutants.—Not later than 30 months after the date of the enactment of this Act, the Administrator shall publish regulations specifying acceptable management practices for sewage sludge containing each toxic pollutants identified under subsection (a)(2) and establishing numerical limitations for each such pollutant for each use of or disposal technique for sludge identified by the Administrator. Such management practices and numerical limitations shall be adequate to protect the public health and the environment from any reasonably anticipated adverse effects of such pollutants. Such regulations shall require compliance no later than six months after their publication.

(3) Alternative standards.—For purposes of this subsection, if, in the judgment of the Administrator, it is not feasible to prescribe or enforce a numerical limitation for a pollutant identified under subsection (a), he may instead promulgate a design, equipment, management practice, or operational standard, or combination thereof, which in his judgment is adequate to protect public health and the environment from any reasonably anticipated adverse effects of such pollutant. In the event the Administrator promulgates a design or equipment standard under this subsection, he shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment.

(4) Treatment of regulations.—Any regulation issued under this subsection shall be considered an "effluent standard or limitation" for purposes of section 308 or section 505 of the Federal Water Pollution Control Act.

(c) Studies and Projects.—The Administrator is authorized to conduct or initiate scientific studies, demonstration projects, and public information and education projects which are designed to promote the safe and beneficial use of sewage sludge for such purposes as aiding the restoration of abandoned mine sites, conditioning soil for parks and recreation areas, agricultural and horticultural uses, and other beneficial purposes. For the purposes of carrying out this subsection, the Administrator may make grants to State water pollution control agencies, other public or nonprofit agencies, institutions, organizations, and individuals. In cooperation with other Federal departments and agencies, other public and private agencies, institutions, and organizations, the Administrator is authorized to collect and disseminate information pertaining to the safe and beneficial use of sewage sludge.

(d) Authorization of Appropriations.—For the purposes of carrying out the scientific studies, demonstration projects, and public information and education projects authorized in this section, there is authorized to be appropriated for fiscal years beginning after September 30, 1985, not to exceed $15,000,000.

SEC. 48. PUGET SOUND.

(a) Master Plan; Priority List; Monitoring Program.—The Administrator, in consultation with the Administrator of the National Oceanic and Atmospheric Administration, a representative of any other interested Federal agency as determined appropriate by the Administrator, representatives of the State of Washington, and representatives of interested local governments as determined appropriate by the Administrator, shall—

(1) develop a comprehensive master plan for Puget Sound, Washington;

(2) recommend priority corrective actions and compliance schedules to address point and nonpoint sources of pollution posing the most serious problems to the water quality of such Sound; and

(3) monitor such sound to determine the effectiveness of actions taken pursuant to the master plan.

(b) Contents of Master Plan.—The master plan developed pursuant to paragraph (1) of subsection (a) may include, but need not be limited to, any of the following standards and practices which are necessary for the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife and allows recreational activities in and on the water:

(1) development of water quality standards for waters within the estuarine zone of Puget Sound;

(2) development of toxicity-based standards for toxic pollutants;

(3) development of water quality based effluent standards for significant point sources of pollution; and

(4) development of best management practices to control nonpoint sources of pollution.

(c) Use of Existing Data.—In developing a master plan under this section, the Administrator shall survey and utilize existing reports, data, and studies relating to Puget Sound that have been developed by or made available to Federal, State, or local agencies.

(d) Grants.—The Administrator is authorized to make grants to the State of Washington if such State adopts a comprehensive master plan pursuant to this section for the Puget Sound. The amount of such grant for a fiscal year, shall, subject to such amounts as are provided in appropriation Acts, be equal to 50 percent of such State's cost of implementing the master plan for such fiscal year.

(e) Authorization of Appropriations.—There is authorized to be appropriated to the Administrator to carry out this section not to exceed $4,900,000 for the fiscal year ending September 30, 1986, $4,450,000 for the fiscal year ending September 30, 1987, and $2,400,000 for the fiscal year ending September 30, 1988. Amounts appropriated under this subsection shall remain available until expended.

SEC. 49. OCEAN DISCHARGE RESEARCH PROJECTS.

(a) In General.—Notwithstanding any other provision of law, the Administrator is authorized to issue a research permit to the Orange County, California, Sanitation Districts for the discharge of preconditioned municipal sewage sludge into the ocean for the purpose of enabling research to be conducted in assessing and analyzing the effects of disposing of sewage sludge by pipeline into ocean waters, if the Administrator is satisfied that such local govenmental agency is actively pursuing long-term land-based options for the handling of its sludge with special emphasis on remote disposal alternatives set forth in the 1980 LA/OMA sludge management project and on reuse of sludge or use of recycled sludge and if the Administrator determines there is no likelihood of an unacceptable adverse effect on the environment as a result of issuance of such permit.

(b) Permit Terms.—

(1) Period.—Such permit for the discharge of sludge shall be for a period of five years.

(2) Monitoring.—Such permit shall provide for monitoring of permitted discharges and other discharges into the ocean in the same area and the effects of such discharge (including cumulative effects) in conformance with requirements established by the Administrator, after consultation with appropriate Federal and State agencies, and for the reporting of such monitoring to Congress and the Administrator every six months.

(3) Volume of discharge.—Such permit shall provide that the volume of such local agency's sludge disposed of by such experimental pipeline shall be no more than one and one-half times that being disposed of by such remote disposal and alternatives for the reuse of sludge and the use of recycled sludge. In no event shall the agency dispose of more than 50 percent of its sludge by the pipeline.

(4) Termination.—The permit shall provide for termination of the permit if the Administrator determines that the disposal of sewage sludge is resulting in an unacceptable adverse impact on fish, shellfish, and wildlife.

(c) Report.—Such districts shall report the results of the program and an analysis of such program to Congress under this section not later than four and one-half years after issuance of the permit.

SEC. 50. GRANTS FOR REPLACEMENT OF CONTAMINATED GROUNDWATER.

(a) Grant Recipients.—The Administrator is authorized to make grants to—

(1) any person who owns or operates a public water system which, because of groundwater contamination, is unable to supply water which is fit for human consumption to some or all of the users of such system, and

(2) any unit of local government on behalf of individuals residing within the boundaries of such unit whose water is supplied from a source other than a public water system and is unfit for human consumption because of groundwater contamination.

(b) Grant Purpose.—Grants under this section shall be for the purpose of providing alternative water supplies to such users and individuals on a temporary basis and providing permanent remedies for water supply problems resulting from groundwater contamination, including but not limited to the drilling of new wells and the installation of new pipes.

(c) Application.—An application for a grant under this section shall be in such form and shall contain such information as the Administrator may require. Each such application shall include—

(1) a description of the source and extent of groundwater contamination;

(2) information on the number of people who do not have water available to them because of such contamination; and

(3) a description of the measures the applicant proposes to undertake with the assistance to be provided under this section.

(d) Federal Share.—The Federal share of the cost of measures undertaken with assistance under this section shall not exceed 50 percent.

(e) Limitations on Amount.—The maximum amount of a grant under this section to any applicant with respect to a particular source of groundwater contamination shall be $2,000,000 for each fiscal year. The maximum amount of grants under this section to applicants within one State shall be $10,000,000 for each fiscal year.

(f) Annual Reports.—The Administrator shall report annually to Congress on grants made under this section. Each such report shall include—

(1) information on applicants for such grants, including the number of such applicants;

(2) information on the source and extent of groundwater contamination with respect to which applications are made under this section, including the average number of people affected by each source of groundwater contamination; and

(3) the average amount of such grants and the types of measures undertaken with such grants.

(g) Definitions.—For purposes of this section—

(1) the term "person" includes a State, a political subdivision of a State, and an agency or instrumentality of a State or political subdivision of a State;

(2) the term "public water system" means

a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves at least 25 individuals; and

(3) the term "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Marianas.

(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section not to exceed $150,000,000 per fiscal year for each of the fiscal years 1986, 1987, and 1988.

(i) JACKSONVILLE, ARKANSAS.—The Administrator shall make a grant under this section of $2,000,000 in each of fiscal years 1986, 1987, and 1988 to the city of Jacksonville, Arkansas, for the purpose of providing alternative water supply on a temporary basis and providing permanent remedies for water supply problems resulting from groundwater contamination.

SEC. 51. UNCONSOLIDATED QUARTERNARY AQUIFER.

Notwithstanding any other provision of law, no person may—

(1) locate or authorize the location of a landfill, surface impoundment, waste pile, injection well, or land treatment facility over the Unconsolidated Quarternary Aquifer, or the recharge zone or streamflow source zone of such aquifer, in the Rockaway River Basin, New Jersey (as such aquifer and zones are described in the Federal Register, January 24, 1984, pages 2946-2948); or

(2) place or authorize the placement of solid waste in a landfill, surface impoundment, waste pile, injection well, or land treatment facility over such aquifer or zone.

This section may be enforced under sections 309 (a) and (b) of the Federal Water Pollution Control Act. For purposes of section 309(c) of such Act, a violation of this section shall be considered a violation of section 301 of the Federal Water Pollution Control Act.

SEC. 52. GRANTS FOR PROTECTING GROUNDWATER QUALITY.

(a) ELIGIBLE APPLICANTS AND ACTIVITIES.—Upon application of a State for which a report submitted under subsection (a) of section 319 of the Federal Water Pollution Control Control Act, as added by section 7 of this Act, and a plan submitted under subsection (b) of such section is approved under such section, the Administrator shall make grants under this section to such State for the purpose of assisting such State in carrying out groundwater quality protection activities which the Administrator determines will advance the State toward implementation of a comprehensive nonpoint source pollution control program. Such activities shall include, but not be limited to, research, planning, groundwater assessments, demonstration programs, enforcement, technical assistance, education and training to protect the quality of groundwater and to prevent contamination of groundwater from nonpoint sources of pollution.

(b) APPLICATIONS.—An application for a grant under this section shall be in such form and shall contain such information as the Administrator may require.

(c) FEDERAL SHARE; MAXIMUM AMOUNT.—The Federal share of the cost of assisting a State in carrying out groundwater protection activities in any fiscal year under this section shall be 50 percent of the costs incurred by the State in carrying out such activities, except that the maximum amount of Federal assistance which any State may receive under this section in any fiscal year shall not exceed $150,000.

(d) REPORT.—The Administrator shall include in each report transmitted under subsection (j) of section 319 of the Federal Water Pollution Control Act, as added by section 7 of this Act, a report on the activities and programs implemented under this section during the preceding fiscal year.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section not to exceed $7,500,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990.

SEC. 53. DEMONSTRATION PROGRAM ON ACIDIFIED LAKES.

(a) RESTORATION OF BIOLOGICAL INTEGRITY.—The Administrator, in conjunction with the United States Fish and Wildlife Service and the environmental agencies of the States, shall carry out a demonstration program to restore the biological integrity of acidified lakes and watersheds through liming. The Administrator, in coordination with the environmental agencies of the States, shall select sites to carry out such program which will enable the Administrator to demonstrate and determine the effectiveness of liming in reducing the acidity of lakes and watersheds and in restoring the biological integrity of acidified lakes and watersheds.

(b) REPORT.—Not later than 90 days after completion of the demonstration program and not later than three and six years after completion of the program, the Administrator shall submit to the appropriate Committees of Congress reports on the results of the demonstration program carried out under this section. Such reports shall include, but not be limited to, an analysis of the effectiveness of liming in reducing the acidity of lakes and watersheds and in restoring the biological integrity of acidified lakes and watersheds in the long-term and the short-term.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section not to exceed $10,000,000 for fiscal years beginning after September 30, 1985, to remain available until expended.

SEC. 54. NEWTOWN CREEK, NEW YORK.

(a) MODIFICATIONS TO TREATMENT PLANT.—The Administrator is authorized to make a grant to the city of New York to install such additional facilities in, and make such modifications to, the Newtown Creek sewage treatment plant as are necessary for the plant to provide secondary treatment. The Federal share of such project shall be 75 percent of the cost of installing such facilities and making such modifications.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to carry out this section for fiscal years beginning after September 30, 1985. Such sums shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.

SEC. 55. SAN DIEGO, CALIFORNIA.

(a) PURPOSE.—The purpose of this section is to protect the economy, public health, environment, surface water and public beaches, and water quality of the city of San Diego, California, and surrounding areas,

which are endangered and are being polluted by raw sewage emanating from the city of Tijuana, Mexico.

(b) CONSTRUCTION GRANTS.—Upon approval of the necessary plans and specifications, the Administrator is authorized to make grants to the Secretary of State, acting through the American Section of the International Boundary and Water Commission (hereinafter in this section referred to as the "Commission"), or any other Federal agency or any other appropriate commission or entity designated by the President. Such grants shall be for construction of a project consisting of—

(1) treatment works in the city of San Diego, California, to provide primary or more advanced treatment of municipal sewage and industrial waste from the city of Tijuana, Mexico; and

(2) a publicly owned treatment works in such city to provide primary or more advanced treatment of such amount of municipal sewage and industrial waste for such city of San Diego as may be necessary to meet the objectives of the Federal Water Pollution Control Act.

(c) FURTHER MEASURES.—As a further measure, the Administrator shall make grants to the Commission or such other agency, commission, or entity as may be designated under subsection (b) for the construction of defensive treatment works to protect residents of the city of San Diego and surrounding areas from pollution resulting from any inadequacies or breakdowns in wastewater treatment works and systems in Mexico. The Commission or such agency, commission, or entity is authorized to construct, operate, and maintain such defensive treatment works in order to accomplish the purposes of this section.

(d) APPROVAL OF PLANS.—Any treatment works for which a grant is made under this section shall be constructed in accordance with plans developed by the Commission or such agency, commission, or entity, in consultation with the city of San Diego, and approved by the Administrator to meet the construction standards which would be applicable if such treatment works were being constructed under section 201 of the Federal Water Pollution Control Act.

(e) CAPACITY OF PROJECT.—The project authorized by this section shall provide capacity to provide treatment of municipal sewage and industrial waste for the cities of Tijuana and San Diego.

(f) APPLICABILITY OF ACT.—All provisions of the Federal Water Pollution Control Act which are applicable to a grant made to a State, municipality, or intermunicipal or interstate agency under section 201(g) of such Act shall apply to a grant made to an agency, commission, or entity for construction of treatment works under subsection (b)(2) of this section, except that the non-Federal share of the costs of such construction shall be paid by the city of San Diego and other non-Federal interests.

(g) FEDERAL SHARE.—Construction of the treatment works under subsections (b)(1) and (c) of this section with respect to municipal sewage and industrial waste from the city of Tijuana shall be at full Federal expense less any costs paid by the State of California and less any costs paid by the Government of Mexico as a result of agreements negotiated with the United States.

(h) OCEAN OUTFALL PERMIT.—Upon application of the city of San Diego, the Administrator may issue a permit under section 402 of the Federal Water Pollution Control Act which modifies the requirements of section 301(b)(1)(B) of such Act to permit the discharge of pollutants for any ocean outfall constructed with Federal assistance under this Act if such pollutants have received primary or more advanced treatment. Any permit issued pursuant to this subsection shall not be effective after December 31, 1993.

(i) EXTRA CAPACITY.—If the treatment works constructed under this section to provide treatment for municipal sewage and industrial waste from the city of Tijuana has capacity which is no longer necessary to provide such treatment, such capacity may be used to provide treatment for municipal sewage and industrial waste for the city of San Diego.

(j) DEFINITIONS.—For purposes of this section, the terms "construction" and "treatment works" have the meanings such terms have under section 212 of the Federal Water Pollution Control Act.

(k) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal years beginning after September 30, 1985, such sums as may be necessary to the Administrator to make grants under this section and such sums as may be necessary to the Commission or such other agency, commission, or entity as the President may designate under subsection (b), to carry out this section.

SEC. 58. NACO, ARIZONA.

(a) PURPOSE.—The purpose of this section is to protect the economy, public health, environment, and surface water and groundwater of the community of Naco, Arizona, which are endangered and are being polluted by raw sewage emanating from the city of Naco, Sonora, Mexico.

(b) CONSTRUCTION GRANTS.—Upon application of the county of Cochise, Arizona, the Administrator shall make grants to such county for construction of a project consisting of—

(1) a publicly owned treatment works in such community of Naco, Arizona, to provide primary or more advanced treatment of not less than 150,000 gallons of untreated sewage emanating from the city of Naco, Sonora, Mexico; and

(2) a publicly owned treatment works in such community of Naco, Arizona, to provide primary or more advanced treatment of such amount of municipal sewage and industrial waste per day for such community of Naco, Arizona, as may be necessary to meet the objectives of the Federal Water Pollution Control Act.

(c) APPROVAL OF PLANS.—Any treatment works for which a grant is made under this section shall be constructed in accordance with plans developed by the county of Cochise, Arizona, and approved by the Administrator to meet the construction standards which would be applicable if such treatment works were being constructed under section 201 of the Federal Water Pollution Control Act.

(d) CAPACITY OF PROJECT.—The project authorized by this section shall provide capacity to provide treatment of municipal sewage and industrial waste for the city of Naco, Sonora, Mexico and the community of Naco, Arizona.

(e) APPLICABILITY OF ACT.—All provisions of the Federal Water Pollution Control Act which are applicable to grants made under section 201(g) of such Act shall apply to grants made under this section to provide treatment of municipal sewage and indus-

trial waste for the community of Naco, Arizona.

(f) Federal Share.—The Federal share of the cost of construction of the treatment works to provide treatment of municipal sewage and industrial waste for the city of Naco, Sonora, Mexico, shall be at full Federal expense less any costs paid by the Government of Mexico as a result of agreements negotiated with the United States.

(g) Extra Capacity.—If the treatment works constructed under this section to provide treatment for municipal sewage and industrial waste for the city of Naco, Sonora, Mexico, has capacity which is no longer necessary to provide such treatment, such capacity may be used to provide treatment for municipal sewage and industrial waste for the community of Naco, Arizona.

(h) Definitions.—For purposes of this section, the terms "construction" and "treatment works" have the meanings such terms have under section 212 of the Federal Water Pollution Control Act.

(i) Authorization of Appropriations.—There is authorized to be appropriated to the Administrator $2,000,000 to make grants under this section for fiscal years beginning after September 30, 1985.

SEC. 37. LIMITATION ON DISCHARGE OF RAW SEWAGE BY NEW YORK CITY.

(a) In General.—

(1) North river plant.—If the wastewater treatment plant identified in the consent decree as the North River plant has not achieved advanced preliminary treatment as required under the terms of the consent decree by August 1, 1986, the city of New York shall not discharge raw sewage from the drainage area of such plant (as defined in the consent decree) into navigable waters after such date in an amount which is greater for any 30-day period than an amount equal to 30 times the average daily amount of raw sewage discharged from such drainage area during the 12-month period ending on the earlier of the date on which such plant becomes operational or March 15, 1986 (as determined by the Administrator), except as provided in subsection (b).

(2) Red hook plant.—If the wastewater treatment plant identified in the consent decree as the Red Hook plant has not achieved advanced preliminary treatment as required under the terms of the consent decree by August 1, 1987, the city of New York shall not discharge raw sewage from the drainage area of such plant (as defined in the consent decree) into navigable waters after such date in an amount which is greater for any 30-day period than an amount equal to 30 times the average daily amount of raw sewage discharged from such drainage area during the 12-month period ending on the earlier of the date on which such plant becomes operational or March 15, 1987 (as determined by the Administrator), except as provided in subsection (b).

(b) Waivers.—

(1) Interruption of plant operation.—In the event of any significant interruption in the operation of the North River plant or the Red Hook plant caused by an event described in subparagraph (A), (B), or (C) of paragraph (5) occurring after the applicable deadline established under subsection (a), the Administrator shall waive the limitation of subsection (a) with respect to such plant, but only to such extent and for such limited period of time as may be reasonably necessary for the city of New York to resume operation of such plant.

(2) Increased precipitation.—In the event that the volume of precipitation occurring after the applicable deadline established under subsection (a) causes the discharge of raw sewage to exceed the limitation under subsection (a), the Administrator shall waive the limitation of subsection (a) with respect to either or both such plants, but only to such extent and for such limited period of time as the Administrator determines to be necessary to take into account the increased discharge caused by such volume of precipitation.

(3) Variations in certain north river drainage area discharges.—In the event that an increase in discharges from the North River drainage area constituting a violation of subsection (a)(1) is due to a random or seasonal variation, and that any sewer hookup occurring, or permit for a sewer hookup granted, after July 31, 1986, is not responsible for such violation, the Administrator shall waive the limitation of subsection (a)(1), but only to such extent and for such limited period of time as the Administrator determines to be reasonably necessary to take into account such random or seasonal variation.

(4) Variations in certain red hook drainage area discharges.—In the event that an increase in discharges from the Red Hook drainage area constituting a violation of subsection (a)(2) is due to a random or seasonal variation, and that any sewer hookup occurring, or permit for a sewer hookup granted, after July 31, 1987, is not responsible for such violation, the Administrator shall waive the limitation of subsection (a)(2), but only to such extent and for such limited period of time as the Administrator determines to be reasonably necessary to take into account such random or seasonal variation.

(5) Circumstances beyond city's control.—The Administrator shall extend either deadline under paragraph (1) or (2) of subsection (a) to such extent and for such limited period of time as may be reasonably required to take into account any—

(A) act of war,

(B) unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight, or

(C) other circumstances beyond the control of the city of New York, except such circumstances shall not include (i) the unavailability of Federal funds under section 201 of the Federal Water Pollution Control Act, (ii) the unavailability of funds from the city of New York or the State of New York, or (iii) a policy decision made by the city of New York or the State of New York to delay the achievement of advanced preliminary treatment at the North River plant or Red Hook plant beyond the applicable deadline set forth in subsection (a).

(c) Penalties.—Except as otherwise provided in subsection (b), any violation of subsection (a) shall be considered to be a violation of section 301 of the Federal Water Pollution Control Act, and all provisions of such Act relating to violations of such section 301 shall apply.

(d) Consent Decree Defined.—For purposes of this section, the term "consent decree" means the consent decree entered into by the Environmental Protection Agency, the city of New York, and the State of New York, on December 30, 1982, relating to construction and operation of the North

River and Red Hook wastewater treatment plants.

(e) COOPERATION.—The Administrator shall work with the city of New York to eliminate the discharge of raw sewage by such city at the earliest practicable date.

(f) SAVINGS CLAUSE.—Nothing in this section shall be construed as modifying the terms of the consent decree.

(g) SENSE OF CONGRESS.—It is the sense of Congress that the Administrator should not agree to any further modification of the consent decree with respect to the schedule for achieving advanced preliminary treatment.

(h) TERMINATION DATES.—

(1) NORTH RIVER PLANT.—The provisions of this section shall remain in effect with respect to the North River drainage area until such time as the North River plant has achieved advanced preliminary treatment (as defined in the consent decree) for a period of six consecutive months.

(2) RED HOOK PLANT.—The provisions of this section shall remain in effect with respect to the Red Hook drainage area until such time as the Red Hook plant has achieved advanced preliminary treatment (as defined in the consent decree) for a period of six consecutive months.

(i) MONITORING ACTIVITIES.—The Administrator shall establish and carry out a program within available funds to implement the monitoring activities which may be required under subsection (a) by December 1, 1985.

(j) ESTABLISHMENT OF METHODOLOGIES.—The Administrator shall establish the methodologies, data base, and any other information required for making determinations under subsection (b)—

(1) for the North River drainage area (as defined in the consent decree) by July 31, 1986, unless the requirements of subsection (h)(1) have been satisfied, and

(2) for the Red Hook drainage area (as defined by the consent decree) by July 31, 1987, unless the requirements of subsection (h)(2) have been satisfied.

(k) VIOLATIONS.—In carrying out this section, if the Administrator finds that a violation of subsection (a) has occurred, the Administrator shall also determine, within 30 days after such finding, whether a provision of subsection (b) applies. If the Administrator requires information from the city of New York in order to determine whether a provision of subsection (b) applies, the Administrator shall request such information. If the city of New York does not supply the information requested by the Administrator, the Administrator shall determine that subsection (b) does not apply. The city of New York shall be responsible only for such expenses as are necessary to provide such requested information. Enforcement action pursuant to subsection (c) shall be commenced at the end of such 30 days unless a provision of subsection (b) applies.

SEC. 18. DEER ISLAND TREATMENT PLANT, MASSACHUSETTS.

(a) EMERGENCY IMPROVEMENTS.—The Administrator is authorized and directed to make grants to the Metropolitan District Commission, Massachusetts, for a project to undertake emergency improvements at the Deer Island Waste Water Treatment Plant in Boston, Massachusetts. The Federal share of such project shall not exceed 75 percent of the cost of carrying out such improvements.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $10,000,000 per fiscal year for each of the fiscal years 1986, 1987, and 1988.

SEC. 19. GREAT LAKES INTERNATIONAL COORDINATION OFFICE.

(a) FINDINGS AND PURPOSE.—

(1) FINDINGS.—The Congress finds that—

(A) the Great Lakes are a valuable national resource, continuously serving the people of the United States and other nations as an important source of food, fresh water, recreation, beauty, and enjoyment;

(B) the United States should seek to attain the goals embodied in the Great Lakes Water Quality Agreement of 1978 with particular emphasis on goals related to toxic pollutants; and

(C) the Environmental Protection Agency (hereinafter in this section referred to as the "Agency") should take the lead in the effort to meet those goals, working with other Federal agencies and State and local authorities.

(2) PURPOSE.—It is the purpose of this section to achieve the goals embodied in the Great Lakes Water Quality Agreement of 1978 through improved organization and definition of mission on the part of the Agency, funding of State grants for pollution control in the Great Lakes area, and improved accountability for implementation of such agreement.

(b) ESTABLISHMENT.—The Great Lakes National Program Office of the Agency is hereby designated at the Great Lakes International Coordination Office (hereinafter in this section referred to as the "Office"). The head of the Office shall also serve as principal liaison person on Great Lakes matters to the International Joint Commission, United States and Canada (hereinafter in this section referred to as the "Commission").

(c) FUNCTIONS.—The Office shall—

(1) develop and implement specific action plans to carry out the responsibility of the United States under the Great Lakes Water Quality Agreement of 1978;

(2) carry out toxic pollutant control demonstration projects as Saginaw Bay, Michigan; Sheboygan Harbor, Wisconsin; Grand Calumet River, Indiana; Ashtabula River, Ohio; and Buffalo River, New York; and at other sites in the Great Lakes at which the Commission determines that sediments are heavily contaminated with toxic materials;

(3) coordinate actions of the Agency (including actions by headquarters and regional offices thereof) aimed at improving Great Lakes water quality;

(4) coordinate actions of the Agency with the actions of other Federal agencies and State and local authorities in developing water quality strategies and obtain the support of those agencies and authorities in achieving the objectives of such agreement;

(5) establish a Great Lakes system-wide surveillance network to monitor the water quality of the Great Lakes, with specific emphasis on the monitoring of toxic pollutants; and

(6) serve as the liaison with, and provide information to, the Canadian members of the Commission and the Canadian counterpart to the Agency.

(d) ADMINISTRATOR'S RESPONSIBILITY.—The Administrator shall ensure that the Office should enter into agreements with the various organizational elements of the Agency involved in Great Lakes activities and the appropriate State agencies specifically delineating—

(1) the duties and responsibilities of each such element and the Agency with respect to the Great Lakes;

(2) the time periods for carrying out such duties and responsibilities; and

(3) the resources to be committed to such duties and responsibilities.

(e) BUDGET ITEM.—The Administrator shall, in the Agency's annual budget submission to Congress, include a funding request for the Office as a separate budget line item.

(f) REPORTS.—

(1) COMPREHENSIVE ASSESSMENT.—Within 120 days after the date of the enactment of this Act, and at the beginning of each fiscal year thereafter, the Administrator shall submit to Congress a comprehensive assessment of the planned efforts to be pursued in the succeeding fiscal year for implementing the Great Lakes Water Quality Agreement of 1978. The assessment shall show by categories (including judicial enforcement, research, State cooperative efforts, and general administration) the amounts anticipated to be expended on Great Lakes water quality initiatives in the fiscal year to which the assessment relates. The assessment shall also include a report of current programs administered by other Federal agencies which make available resources to Great Lakes water quality efforts.

(2) COMPREHENSIVE REPORT.—Within 150 days after the end of each fiscal year, the Administrator shall submit to Congress a comprehensive report which—

(A) describes the achievements in the preceding fiscal year in implementing such agreement and shows by categories (including judicial enforcement, research, State cooperative efforts, and general administration) the amounts expended on Great Lakes water quality initiatives in such preceding fiscal year;

(B) describes the progress made in such preceding fiscal year in implementing the system of surveillance of the water quality of the Great Lakes, with particular reference to toxic pollutants; and

(C) describes the long-term prospects for improving the water quality of the Great Lakes.

(g) GREAT LAKES RESEARCH.—

(1) ESTABLISHMENT OF RESEARCH OFFICE.—There is established within the National Oceanic and Atmospheric Administration the Great Lakes Research Office (hereinafter in this section referred to as the "Research Office.").

(2) IDENTIFICATION OF ISSUES.—The Research Office shall identify issues relating to the Great Lakes resources on which research is needed. The Research Office shall submit a report to Congress on such issues before the end of each fiscal year which shall indentify any changes in the Great Lakes with respect to such issues.

(3) INVENTORY.—The Reserach Office shall identify and inventory Federal, State, university, and tribal environmental research programs (and, to the extent feasible, those of private organizations and other nations) relating to the Great Lakes System, and shall update that inventory every four years.

(4) RESEARCH EXCHANGE.—The Research Office shall establish a Great Lakes research exchange for the purpose of facilitating the rapid identification, acquisition, retrieval, dissemination, and the use of information concerning research projects which are ongoing or completed and which affect the Great Lakes system.

(5) RESEARCH PROGRAM.—The Research Office shall develop, in cooperation with the Coordination Office, a comprehensive environmental research program and data base for the Great Lakes system. The data base shall include, but not be limited to, data relating to water quality, fisheries, and biota.

(6) MONITORING.—The Research Office shall conduct, through the Great Lakes Enviromental Research Laboratory, the National Sea Grant College program, other Federal laboratories, and the private sector, appropriate research and monitoring activities which address priority issues and current needs relating to the Great Lakes.

(h) RESEARCH AND MANAGEMENT CONDITION.—

(1) JOINT PLAN.—Before October 1 of each year, the Coordination Office and the Research Office shall prepare a joint research plan for the fiscal year which begins the following calendar year.

(2) CONTENTS OF PLAN.—Each plan prepared under paragraph (1) shall—

(A) identify all proposed research dedicated to activities conducted under the Great Lakes Water Quality Agreement of 1978;

(B) include the Agency's assessment of priorities for research needed to fulfill the terms of such Agreement; and

(C) identify all proposed research that may be used to develop a comprehensive environmental data base for the Great Lakes system and establish priorities for development of such data base.

(i) AUTHORIZATIONS OF APPROPRIATIONS.—

(1) FOR THE OFFICE.—There are authorized to be appropriated for the purposes of carrying out subsections (b), (c), and (d) and for the purpose of carrying out the functions, powers, and duties of the Office not to exceed—

(A) $8,000,000 for fiscal year 1986, of which $1,500,000 shall be available only to carry out subsection (c)(2);

(B) $9,000,000 for fiscal year 1987, of which $2,500,000 shall be available only to carry out subsection (c)(2);

(C) $10,000,000 for fiscal year 1988, of which $3,500,000 shall be available only to carry out subsection (c)(2);

(D) $12,000,000 for fiscal year 1989, of which $5,000,000 shall be available only to carry out subsection (c)(2); and

(E) $13,000,000 for fiscal year 1990, of which $5,000,000 shall be available only to carry out subsection (c)(2).

(2) FOR GREAT LAKES STUDIES.—For the purpose of carrying out section 104(f) of the Federal Water Pollution Control Act there is authorized to be appropriated $10,000,000 for fiscal year 1986. Such funds shall be in addition to and not in lieu of any funds authorized to be appropriated under section 104(u) of such Act.

(3) FOR GREAT LAKES RESEARCH.—There are authorized to be appropriated for purposes of carrying out subsections (g) and (h) not to exceed—

(A) $2,000,000 per fiscal year for fiscal years 1986 and 1987; and

(B) $3,000,000 per fiscal year for fiscal years 1988, 1989, and 1990.

SEC. [illegible]. OAKWOOD BEACH AND RED HOOK PROJECTS, NEW YORK.

(a) RELOCATION OF NATURAL GAS FACILITIES.—Notwithstanding any provision of the Federal Water Pollution Control Act, the Administrator shall pay, to the extent provided in appropriation Acts, in the same proportion as the Federal share of other project costs, all expenses for the relocation of facilities for the distribution of natural gas with respect to the entire wastewater treat-

ment works known as the Oakwood Beach (EPA Grant Numbered 360392) and Red Hook (EPA Grant Numbered 360394) projects, New York.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal years beginning after September 30, 1985, not to exceed $9,000,000 to carry out this section.

SEC. 61. CHIPPEWA TOWNSHIP, PENNSYLVANIA.

In order to protect the public health, environment, and water quality endangered by the destruction of the Chippewa Township, Pennsylvania, sewage treatment facility and the resultant raw sewage discharge into Brady's Run and the Beaver River, Pennsylvania, the Administrator is directed to remove such raw sewage.

SEC. 62. DES MOINES, IOWA.

(a) AUTHORITY TO MAKE GRANTS.—The Administrator is authorized to make a grant to the city of Des Moines, Iowa, for construction of the Central Sewage Treatment Plant component of the Des Moines, Iowa, metropolitan area project. The Federal share of such project shall be 75 percent of the cost of construction.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section not to exceed $85,000,000 for fiscal years beginning after September 30, 1985. Such sums shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.

SEC. 63. WASTEWATER RECLAMATION DEMONSTRATION.

(a) AUTHORITY TO MAKE GRANTS.—The Administrator is authorized to make a grant to the San Diego Water Reclamation Agency, California, to demonstrate and field test for public use innovative processes which advance the technology of wastewater reclamation and which promote the use of reclaimed wastewater.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated not to exceed $3,000,000 to carry out this section for fiscal years beginning after September 30, 1985.

SEC. 64. BOSTON HARBOR AND ADJACENT WATERS.

(a) GRANTS.—The Administrator shall make grants to the Massachusetts Water Resource Authority for purposes of—

(1) assessing the principal factors having an adverse effect on the environmental quality of Boston Harbor and its adjacent waters;

(2) developing and implementing a management program to improve the water quality of such Harbor and waters; and

(3) constructing necessary waste water treatment works for providing secondary treatment for the areas served by such authority.

(b) FEDERAL SHARE.—The Federal share of projects described in subsection (a) shall not exceed 75 percent of the cost of construction thereof.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $20,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990. Such sums shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.

SEC. 65. TREATMENT WORKS IN WASHINGTON STATE.

(a) AUTHORITY TO MAKE GRANTS.—The Administrator is authorized to make grants to the sewage treatment authorities discharging into Puget Sound and adjacent marine waters, including the Strait of Juan de Fuca and Bellingham Bay, to construct necessary treatment works for providing secondary treatment for the areas served by such authorities. The Federal share of such projects shall not exceed 75 percent of the cost of construction thereof.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $250,000,000 to carry out this section for fiscal years beginning after September 30, 1985. Such sums shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.

SEC. 66. IMPROVEMENT PROJECTS.

(a) AVALON, CALIFORNIA.—The Administrator shall make a grant of $3,000,000 from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of California for fiscal year 1986 to the city of Avalon, California, for improvements to the publicly owned treatment works of such city.

(b) WALKER AND SMITHFIELD TOWNSHIPS, PENNSYLVANIA.—The Administrator shall make grants from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of Pennsylvania for fiscal year 1986—

(1) to Walker Township, Pennsylvania, for developing a collector system and connecting its wastewater treatment system into the Huntingdon Borough, Pennsylvania, sewage treatment plant, and

(2) to Smithfield Township, Pennsylvania, for rehabilitating and extending its collector system.

(c) TAYLOR MILL, KENTUCKY.—Notwithstanding section 201(g)(1) of the Federal Water Pollution Control Act or any other provision of law, the Administrator shall make a grant of $250,000 from funds allotted under section 205 of such Act to the State of Kentucky for fiscal year 1986 to the city of Taylor Mill, Kentucky, for the repair and reconstruction, as necessary, of the publicly owned treatment works of such city.

(d) WATSONVILLE, CALIFORNIA.—The Administrator shall make a grant of $27,000,000 from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of California for fiscal years beginning after September 30, 1985, to the city of Watsonville, California, for improvements to the wastewater treatment and disposal facilities of such city.

(e) NEVADA COUNTY, CALIFORNIA.—The Administrator is authorized to make a grant from funds allotted to the State of California for fiscal years beginning after September 30, 1985, for the construction of a collection system serving the Glenshire/Devonshire area of Nevada County, California, to deliver waste to the Tahoe-Truckee Sanitary District's regional wastewater treatment facility.

(f) TREATMENT WORKS FOR WANAQUE, NEW JERSEY.—The Administrator shall make grants to the Wanaque Valley Regional Sewerage Authority, New Jersey, from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of New Jersey, for fiscal years beginning after September 30, 1985, for the construction of treatment works with a total treatment capacity of 1,050,000 gallons per day (includ-

ing a treatment module with a treatment capacity of 350,000 gallons per day). Notwithstanding section 202 of the Federal Water Pollution Control Act, the Federal share of the cost of construction of such treatment works shall be 75 percent.

(g) TREATMENT WORKS FOR LENA, ILLINOIS.—The Administrator shall make grants to the village of Lena, Illinois, from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of Illinois, for fiscal years beginning after September 30, 1985, for the construction of a replacement moving bed filter press for the treatment works of such village. Notwithstanding section 202 of the Federal Water Pollution Control Act, the Federal share of the cost of construction of such project shall be 75 percent.

(h) PRIORITY FOR COURT ORDERED PROJECTS.—The Commonwealth of Pennsylvania, from the sums allocated to it under this Act, shall give first priority to the Wyoming valley Sanitary Authority Secondary Treatment project mandated under federal court order, regardless of the date of start of construction made pursuant to the court order.

SEC. 67. STUDY OF REGULATION OF DE MINIMIS DISCHARGES.

(a) STUDY.—The Administrator shall study the feasibility and desirability of eliminating the regulation of discharges of pollutants into the navigable waters in amounts which, in terms of volume, concentration, and type of pollutant, are not significant.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Administrator shall submit a report on the results of such study along with recommendations to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

SEC. 68. STUDY OF EFFECTIVENESS OF INNOVATIVE AND ALTERNATIVE PROCESSES AND TECHNIQUES.

(a) EFFECTIVENESS STUDY.—The Administrator shall study the effectiveness on waste treatment of innovative and alternative wastewater treatment processes and techniques referred to in section 201(g)(5) of the Federal Water Pollution Control Act which have been utilized in treatment works constructed under such Act. In conducting such study, the Administrator shall compile information, by State, on the types of such processes and techniques utilized, on the number of facilities constructed with such processes and techniques, and a description of such processes and techniques which have not performed to design standards. The Administrator shall also determine which States have not obligated the full amount set aside under section 205(i) of such Act for such processes and techniques and the reasons for each such State's failure to make such obligations.

(b) REPORT.—Not later than two years after the date of the enactment of this Act, the Administrator shall submit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of such study, along with recommendations for providing more effective incentives for innovative and alternative wastewater treatment processes and techniques.

SEC. 69. WATER QUALITY IMPROVEMENT STUDY.

(a) STUDY.—The Administrator shall study the water quality improvements which have been achieved by application of best available technology economically achievable pursuant to section 301(b)(2) of the Federal Water Pollution Control Act. Such study shall include, but not be limited to, an analysis of the effectiveness of, and the costs and benefits associated with, application of best available technology economically achievable pursuant to such section and an analysis of the effectiveness of the water quality program under such Act and methods of improving such program, including site specific levels of treatment which will achieve the water quality goals of such Act in a cost-effective manner.

(b) REPORT.—Not later than two years after the date of the enactment of this Act, the Administrator shall submit a report on the results of the study conducted under subsection (a) together with recommendations for improving the water quality program and its effectiveness to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

SEC. 70. STUDY OF TESTING PROCEDURES.

(a) STUDY.—The Administrator shall study the testing procedures for analysis of pollutants established under section 304(h) of the Federal Water Pollution Control Act. Such study shall include, but not be limited to, an analysis of the adequacy and standardization of such procedures. In conducting the analysis of the standardization of such procedures, the Administrator shall consider the extent to which such procedures are consistent with comparable procedures established under other Federal laws.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Administrator shall submit a report on the results of the study conducted under this subsection, together with recommendations for modifying the test procedures referred to in subsection (a) to improve their effectiveness, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(c) BIENNIAL REVIEWS.—Biennially after the date of submission of the report under subsection (b), the Administrator shall conduct a state-of-the-art review of the test procedures for the analysis of pollutants referred to in subsection (a) for the purpose of determining the adequacy and effectiveness of such procedures and shall, based on the results of such review, submit to the committees referred to in subsection (b) recommendations for modifying such procedures to improve their effectiveness.

SEC. 71. STUDY OF PRETREATMENT OF TOXIC POLLUTANTS.

(a) STUDY.—The Administrator shall study—

(1) the adequacy of data on environmental impacts of toxic industrial pollutants discharged from publicly owned treatment works;

(2) the extent to which secondary treatment at publicly owned treatment works removes toxic pollutants;

(3) the capability of publicly owned treatment works to revise pretreatment requirements under section 307(b)(1) of the Federal Water Pollution Control Act;

(4) possible alternative regulatory strategies for protecting the operations of publicly owned treatment works from industrial discharges, and shall evaluate the extent to which each such strategy identified may be

expected to achieve the goals of this Act; and

(5) the adequacy of Federal, State, and local resources to establish, implement, and enforce multiple pretreatment limits for toxic pollutants for each such alternative strategy.

(b) REPORT.—Not later than two years after the date of the enactment of this Act, the Administrator shall submit a report on the results of such study along with recommendations for improving the effectiveness of pretreatment requirements to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

SEC. 72. STUDIES OF WATER POLLUTION PROBLEMS IN AQUIFERS.

(a) STUDIES.—The Administrator, in conjunction with State and local agencies and after providing an opportunity for full public participation, shall conduct studies for the purpose of identifying existing and potential point and nonpoint sources of pollution, and of identifying measures and practices necessary to control such sources of pollution, in the following groundwater systems and aquifers.

(1) the groundwater system of the Upper Sante Cruz Basin and the Avra-Altar Basin of Pima, Pinal, and Santa Cruz Counties, Arizona;

(2) the Spokane-Rathdrum Valley Aquifer, Washington and Idaho;

(3) the Nassau and Suffolk Counties Aquifer, New York;

(4) the Whidbey Island Aquifer, Washington;

(5) the Unconsolidated Quaternary Aquifer, Rockaway River area, New Jersey; and

(6) the Sparta Aquifer, Arkansas.

(b) PROPOSED MANAGEMENT PLANS.—After completion of each study under subsection (a), the Administrator, in conjunction with State and local agencies and after providing an opportunity for full public participation, shall prepare a proposed management plan describing methods of implementing the measures and practices identified for each groundwater system and aquifer under subsection (a).

(c) REPORTS.—Not later than one year after the date of the enactment of this Act, the Administrator shall submit to Congress an interim report of the studies and proposed management plans under this section. Not later than two years after such date of enactment, the Administrator shall complete such studies and plans and submit to Congress a final report of such studies and plans.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $10,000,000 for fiscal years beginning after September 30, 1985, to carry out this section.

SEC. 73. GREAT LAKES CONSUMPTIVE USES STUDY.

(a) STUDY OF CONTROL MEASURES.—In recognition of the serious impacts that are expected to occur to the Great Lakes environment as a result of a projected fivefold increase in consumption of Great Lakes water, including loss of wetlands and reduction of fish spawning and habitat areas, as well as serious economic losses to vital Great Lakes industries, and in recognition of the national goal to provide environmental protection and preservation of our natural resources while allowing for continued economic growth, the Administrator, in cooperation with other interested departments, agencies, and instrumentalities of the United States and the eight Great Lakes States and their political subdivisions, is authorized to conduct a study of control measures which can be implemented to reduce the quantity of Great Lakes water consumed without adversely affecting projected economic growth of the Great Lakes region.

(b) MATTERS INCLUDED.—The study authorized by this section shall include an analysis of both existing and new technology which is likely to be feasible in the foreseeable future and shall at a minimum include the following:

(1) a review of the methodologies used to forecast Great Lakes consumptive uses, including an analysis of the sensitivity of key variables affecting such uses;

(2) an analysis of the effect that enforcement of provisions of the Federal Water Pollution Control Act relating to thermal discharges has had on consumption of Great Lakes water;

(3) an analysis of the effect of laws, regulations, and national policy objectives on consumptive uses of Great Lakes water used in manufacturing;

(4) an analysis of the economic effects on a consuming industry and other Great Lakes interests associated with a particular consumptive use control strategy;

(5) an analysis of associated environmental impacts, both singularly and in combination with other consumptive use control strategies; and

(6) a summary discussion containing recommendations for methods of controlling consumptive uses which methods maximize benefits to the Great Lakes ecosystem and also provide for continued full economic growth for consuming industries as well as other industries which depend on the use of Great Lakes water.

(c) GREAT LAKES STATES DEFINED.—For purposes of this section, the term "Great Lakes States" means Minnesota, Wisconsin, Illinois, Ohio, Michigan, Indiana, Pennsylvania, and New York.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal years beginning after September 30, 1985, $4,500,000 to carry out this section. Sums appropriated under this section shall remain available until expended.

SEC. 74. SULFIDE CORROSION STUDY.

(a) STUDY.—The Administrator shall conduct a study of the corrosive effects of sulfides in collection and treatment systems, the extent to which the uniform imposition of categorical pretreatment standards will exacerbate such effects, and the range of available options to deal with such effects.

(b) CONSULTATION.—The study required by this section shall be conducted in consultation with the Los Angeles City and County sanitation agencies.

(c) REPORT.—Not later than one year of the date of the enactment of this Act, the Administrator shall submit a report on the results of the study, together with recommendations for measures to reduce the corrosion of treatment works, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $2,000,000 to carry out this section for fiscal years beginning after September 30, 1985.

SEC. 75. PULP MILL STUDY.

(a) FEASIBILITY STUDY.—The Administrator, in consultation with the State of Alaska,

shall conduct a study to determine the feasibility of resolving the air pollution control, solid waste disposal, water quality standards compliance, and energy impacts associated with the achievement of best practicable technology under section 301 of the Federal Water Pollution Control Act with respect to the Alaska Lumber and Pulp Company, located at Sitka, Alaska (NPDES permit numbered AK000053-1).

(b) Report.—Not later than 180 days after the date of the enactment of this Act, the Administrator shall submit a report on the results of the study conducted under subsection (a) to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

SEC. 76. STUDY OF RAINFALL INDUCED INFILTRATION INTO SEWER SYSTEMS.

(a) Study.—The Administrator shall study problems associated with rainfall induced infiltration into wastewater treatment sewer systems. As part of such study, the Administrator shall study appropriate methods of regulating rainfall induced infiltration into the sewer system of the East Bay Municipal Utility District, California.

(b) Report.—Not later than one year after the date of the enactment of this Act, the Administrator shall submit to Congress a report on the results of such study, along with recommendations on reasonable methods to reduce such infiltration and on regulatory mechanisms to address special problems associated with increased flows from such systems resulting from such infiltration.

SEC. 77. STUDY OF pH IN DISCHARGES FROM MINING OPERATIONS.

(a) Study.—The Administrator shall study effluent limitations as they relate to pH in discharges from mining operations.

(b) Report.—Not later than one year after the date of the enactment of this Act, the Administrator shall submit to Congress a report on the results of such study along with the recommendations as to the feasibility of permitting modifications of such effluent limitations to permit lower pH in such discharges than is otherwise required.

SEC. 78. STUDY OF POLLUTION IN LAKE PEND OREILLE, IDAHO.

(a) Comprehensive Study.—The Administrator shall conduct a comprehensive study of the sources of pollution in Lake Pend Oreille, Idaho, and the Clark Fork River and its tributaries, Idaho, Montana, and Washington, for the purpose of identifying the sources of such pollution. In carrying out this subsection, the Administrator shall consider existing studies, surveys, and test results concerning such pollution.

(b) Report.—Not later than one year after the date of the enactment of this Act, the Administrator shall submit to Congress a report on the results of the study conducted under this section together with any recommendations of the Administrator.

(c) Education Program.—The Administrator shall make the report under subsection (b) available to the public and shall carry out such education programs as the Administrator deems appropriate for the purpose of making the public aware of the results of the study conducted under subsection (a) and the recommendations contained in such report.

(d) Authorization of Appropriations.—There is authorized to be appropriated to carry out this section for fiscal years beginning after September 30, 1985, such sums as may be necessary.

SEC. 79. LIMITATION ON PAYMENTS.

No payments may be made under this Act except to the extent provided in advance in appropriation Acts.

SEC. 80. RIGHTS AND LIABILITIES UNDER OTHER FEDERAL STATUTES.

Section 505 of the Federal Water Pollution Control Act is amended by inserting the following new subsection (f) and by designating the succeeding subsections accordingly:

"(f) Nothing in this Act shall affect or modify the rights or liabilities of any person under other Federal statutes with respect to damages caused by noncompliance with any requirement of this Act or any permit issued under this Act.".

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: "An Act to amend the Federal Water Pollution Control Act to provide for the renewal of the quality of the Nation's waters, and for other purposes."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 8) was laid on the table.

99TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
99-189

WATER QUALITY RENEWAL ACT OF 1985

JULY 2, 1985.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

---

Mr. HOWARD, from the Committee on Public Works and Transportation, submitted the following

REPORT

together with

SUPPLEMENTAL VIEWS

[To accompany H.R. 8]

[Including cost estimate of the Congressional Budget Office]

The Committee on Public Works and Transportation, to whom was referred the bill (H.R. 8) to amend the Federal Water Pollution Control Act to provide for the renewal of the quality of the Nation's waters, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause of the bill and inserts a new text which appears in italic type in the reported bill.

INTRODUCTION

The existing Water Pollution Control Program stems from the complete rewrite of prior water pollution control laws which was incorporated in the Federal Water Pollution Control Act Amendments of 1972. The 1972 Act established as goals the reduction and ultimately the elimination of discharges of pollutants from municipal sewage systems and industrial plants. An interim goal of July 1, 1983, was established to achieve, wherever attainable, fishable and swimmable water quality in all of the rivers, lakes and streams of the Nation.

The 1972 Act established two primary mechanisms for the accomplishment of these goals. First, all industrial and municipal dischargers were required to treat their wastes to clearly definable minimal levels based on best practicable and best available technologies. Beyond those minimum levels, dischargers were required to comply with any more stringent state or Federal requirements based on receiving water quality standards. These requirements were to be enforced nationwide through permits required for every point source discharging into navigable waters.

The technology-based minimum treatment requirements were to be imposed in increasingly stringent steps. For industries, effluent limitations reflecting application of the best practicable control technology currently available were to be achieved by 1977. The corresponding 1977 effluent limitation for municipalities was secondary treatment. By 1983, industries were to achieve effluent limitations corresponding to the best available technology economically achievable.

The second mechanism was a significantly strengthened program of grant assistance to municipalities for the construction of sewage treatment facilities to meet the requirements of the Act. The Federal share of eligible project costs was raised to 75 percent and $20.75 billion was authorized for grants, including reimbursement grants, for the construction of treatment facilities under the new law.

These two fundamental concepts have remained essentially the same since the 1972 Act, although there have been several additional amendments. The first of the important changes in the law was enacted in 1977. This was the "mid-course corrections" which had been contemplated since 1972. The 1977 amendments authorized an additional $25.5 billion for the Construction Grants Program. In addition, they established a program for encouraging innovative and alternative approaches to wastewater treatment and initiated a mechanism for turning over more of the management of the grants program to the states. The 1977 Act also placed greater emphasis on the control of toxic pollutants and imposed new dates of required best available technology and best conventional technology compliance for toxic pollutants, conventional pollutants, and other pollutants which fell into neither of these categories. For all toxic pollutants referred to in Table 1 of Committee Print 95-30 of the Committee on Public Works and Transportation of the House of Representatives (the so-called priority pollutants), the compliance date was set at not later than July 1, 1984. For all toxic pollutants listed pursuant to the provisions of section 307(a) of the Act, compliance with effluent limitations was required not later than three years after the date of establishment of the effluent limitations. For conventional pollutants, the compliance date was set at not later than July 1, 1984. For other pollutants which fall neither within the conventional or toxic categories, the compliance date was set at not later than three years after the date of the establishment of effluent limitations, or not later than July 1, 1984, whichever is later, but in no case later than July 1, 1987.

The other significant changes to the 1972 Act occurred in the 1981 amendments, which related primarily to the Construction Grants Program. In the 1981 Act, the Federal share was reduced from 75 to 55 percent beginning in fiscal year 1985. In addition, eligible categories for grant assistance were limited to treatment works, associated interceptor sewers and correction of inflow-infiltration problems also beginning in fiscal year 1985. Other items such as problems associated with combined overflows and construction and repair of collector sewers, were eliminated from grant eligibility. This was tempered somewhat by a provision which allowed grants to be made for these otherwise ineligible categories in an amount not to exceed 20 percent of a State's allotment as determined by the Governor. Also, grants for planning and design were eliminated and replaced by a provision which provided for an allowance for planning and design costs when a step three construction grant was approved. In order to preserve some continuity in the program, the new provisions with regard to the amount of the Federal grant share were not made applicable to projects which received construction grants prior to the end of fiscal year 1984, but only for the new eligible categories.

The 1972 Act has resulted in significant improvement in the control of discharges of pollutants into the Nation's waters. Studies indicate that at the very least, pollution loads have not increased even though substantial increases in population and industrial discharges have occurred. However, the program has not performed as well as expected due primarily to uncertainties in funding, insufficient levels of funding, and delays in promulgation of effluent standards for industrial dischargers.

H.R. 8, as reported by the Committee, is designed to correct difficulties existing with regard to the program and to signifcantly improve the effectiveness of the water pollution control program. The bill provides for a five-year extension of the authorization for construction grants, a separate grant system to enable states to establish revolving funds to assist communities within the state in constructing needed sewage treatment facilities, reinstatement of combined sewer overflow projects as an eligible category for grant assistance, and the extension of compliance dates for the achievement of best available technology and best conventional technology, to reflect the delays which have occurred in the promulgation of the effluent limitations.

"The Assessment of Needed Publicly Owned Wastewater Treatment Facilities in the United States," commonly referred to as the 1984 Needs Survey, was submitted by Congress in February 1985. This survey, which is a joint effort of E.P.A. and the states, estimates the investment required to meet both 1984 and year 2000 sewage treatment needs.

The 1984 survey estimates that a total investment of $101.7 billion will be required to construct municipal water pollution control facilities eligible for Federal financial assistance under the Federal Water Pollution Control Act. This estimate includes $40.6 billion to construct primary, secondary and advanced treatment plants for the current population and $12.5 billion for these measures to address the population growth expected to occur between 1984 and 2000. These sums reflect the limitation on reserve capacity contained in the 1981 amendments which set the 1990 population level as the maximum level for which Federal financial assistance will be available.

Also included are other categories of municipal pollution control components consisting of replacement and rehabilitation of existing sewers, construction of new collector sewers and correction of combined sewer overflows. These categories are not generally eligible for construction grant assistance under the 1981 amendments but assistance can be made available for them at the discretion of a Governor up to a limit of 20 percent of the state's amount. The estimates for these categories are $44.4 billion for the current 1984 population and an additional $4.2 billion to meet the needs of expected population growth through the year 2000.

The Environmental Protection Agency in the 1984 Needs Survey estimates that meeting all eligible needs would result in a potential future Federal investment of approximately $35.8 billion.

H.R. 8 authorizes a total of construction grant funds of $12 billion through fiscal year 1990. In addition, it authorizes a total of $9 billion in grants to states for the establishment of state revolving funds to assist municipalities in the construction of needed water pollution control facilities. This constitutes through fiscal year 1994 $23 billion in Federal financial assistance as compared to a needed Federal investment of approximately $35.8 billion.

The Committee expects that the $9 billion in Federal assistance for the establishment of state revolving funds will result in the construction of substantially more pollution control facilities than would $9 billion in construction grant funds.

Section 30 of H.R. 8 required the Administrator to submit to Congress by February 10, 1990, a report on the financial status and operations of water pollution control revolving funds established by the states. In addition, section 16 which established the revolving fund program requires each state to annually make a full and complete report to the Administrator concerning the use of funds in the revolving fund and requires the Administrator on an annual basis to conduct or require states to conduct independent reviews and audits.

The Committee is hopeful that the state revolving funds together with the construction grant authorizations will enable municipal water pollution control needs to be met within a reasonable time. The Committee intends, however, to very carefully monitor the progress of the states in order to determine whether any changes need to be made in order to insure that the goals of the Act are met insofar as they apply to municipal facilities.

Section 316(a) of the Federal Water Pollution Control Act authorizes a thermal discharge limitation less stringent than the limitation proposed for a facility if the lesser standard assures "a balanced, indigenous population of shellfish, fish and wildlife" in the affected body of water.

H.R. 8 does not modify section 316(a). It has been suggested, however, that the statute could be interpreted to contradict Congress' intent. A case in point is New Jersey Central Power and Light Company's Oyster Creek Nuclear Generating Station in Ocean County, New Jersey. The Committee understands that prior to the plant's construction the stream which serves as its discharge canal was a low flow, brackish creek. Water quality and aquatic life productivity were both poor. Fish would not reproduce in the creek and mortality rates were high.

In constructing the plant the stream was dredged and modified extensively. This permanently changed the salinity and temperature of the stream. Unlike its historic character, the stream now has a thriving, diverse fish and shellfish community. Nevertheless, it has been suggested that this community is not "indigenous" under section 316(a), and the plant, therefore, is ineligible for a variance under the statute.

The Committee does not agree with that suggestion. The Committee believes that a thermal discharge variance under the statute is fully consistent with the conditions noted in the example described above.

Section-by-Section Analysis

SECTION 1—SHORT TITLE, DEFINITION OF ADMINISTRATOR

Section 1 provides that this Act may be cited as the Water Quality Renewal Act of 1985. It also provides that the term "Administrator" refers to the Administrator of the Environmental Protection Agency.

SECTION 2—AUTHORIZATIONS OF APPROPRIATIONS

This section continues through Fiscal Year 1990 authorizations for a number of programs in the Water Pollution Control Act as follows:

—$22,770,000 per fiscal year for research activities and investigations on the causes and effects of water pollution.

—$3 million per fiscal year for the training of personnel who operate and maintain treatment plants.

—$1,500,000 per fiscal year for forecasting the supply of and demand for occupational categories needed in the water pollution control field.

—$75 million per fiscal year for grants to state and interstate agencies to assist in administering programs for water pollution control.

—$7 million per fiscal year for grants to educational institutions for programs to train personnel in the operation of water pollution control facilities and to provide scholarships for students entering the field of operation and maintenance of publicly owned treatment works.

—$50 million per fiscal year for grants under section 208 for developing and implementing areawide waste treatment management planning processes.

—$50 million per fiscal year for the rural clean water program.

—$50 million per fiscal year to implement interagency agreements for the utilization of other Federal laws to assist in controlling water pollution.

—$30 million per fiscal year for the Clean Lakes Program, which provides for the restoration of the quality of water in lakes.

—$110 million per fiscal year for general administration of the Federal Water Pollution Control Act by the Environmental Protection Agency.

SECTION 3—AUTHORIZATIONS FOR CONSTRUCTION GRANTS

This section extends the authorization level for the Construction Grants Program of $2.4 billion per fiscal year through fiscal year 1990.

SECTION 4—COMPLIANCE DEADLINES

This section extends the compliance dates for achievement of best available technology and best conventional technology.

Subsection (a) of section 4 extends the compliance date for all toxic pollutants referred to in Table 1 of Committee Print 95-30 of the House Committee on Public Works and Transportation (the priority pollutants). Compliance is to be as expeditiously as possible, but in no case later than three years and six months after the date such effluent limitations are established.

Subsection (b) of section 4 extends the compliance date for all other toxic pollutants which may be listed under Section 307(a). Compliance is to be as expeditiously as possible, but in no case later than three years and six months after the date of establishment of any applicable effluent limitations.

Subsection (c) of section 4 extends the compliance date for application of best conventional technology (for conventional pollutants—biological oxygen demand, fecal coliform, suspended solids and pH). Compliance is to be as expeditiously as possible, but in no case later than three years and six months after the establishment of applicable effluent limitations.

Subsection (d) of section 4 extends the requirement for best available technology for all other pollutants. Compliance is to be as expeditiously as possible, but in no case later than three years and six months after the date the effluent limitations are established.

Subsection (e) of section 4 requires the Administrator of the Environmental Protection Agency to promulgate final regulations establishing effluent limitations for direct dischargers and limitations requiring pretreatment for all of the toxic pollutants referred to in Table I of Committee Print 95-30 in accordance with the following schedule:

Foundries	June 30, 1985.
Nonferrous metals forming	June 30, 1985.
Organic chemicals and plastics and synthetic fibers	March 31, 1986.
Pesticides	August 31, 1985.
Nonferrous metals (phase II)	July 31, 1985.

SECTION 5—INDIVIDUAL CONTROL STRATEGIES FOR TOXIC POLLUTANTS

This section provides for the development and implementation of individual control strategies to achieve compliance with applicable water quality standards where it is determined that such compliance will not result from the application of best available technology and best conventional technology.

Subsection (a) requires each state, not later than one year after the date of enactment of this legislation, to submit to the Administrator a list of all navigable waters in such state for which the state does not expect the applicable water quality standard to be achieved after the requirements for best available technology and best conventional technology are met, due entirely or substantially to discharges from point sources of toxic pollutants listed pursuant to section 307(a). For each segment of the waters included on this list, the state is to determine the specific point sources discharging toxic pollutants which are believed to be preventing or impairing such water quality, and the amount of each toxic pollutant discharged by each source. The state submission is to also include an individual control strategy, which the state determines will produce a reduction in the discharge of toxic pollutants from point sources identified by the state, through the establishment of effluent limitations and water quality standards. The State's proposed reduction in toxic discharges must be sufficient, in combination with other controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than three years after the date of the establishment of the strategy.

Not later than 120 days after the last day of the one-year submittal period, the Administrator shall approve or disapprove the control strategies submitted by a state.

If a state fails to submit control strategies or the Administrator does not approve the control strategies submitted by a state, then, not later than one year after the last day of the submittal period the Administrator, in cooperation with the state and after notice and opportunity for public comment, shall publish in the Federal Register a list of all navigable waters in the state for which the Administrator does not expect the applicable water quality standard will be achieved after the requirements for best available technology and best conventional technology are met, due entirely or substantially to discharges from point sources of any toxic pollutants listed pursuant to section 307(a). For each segment of the navigable waters included on the list, the Administrator shall determine the specific point sources discharging any such toxic pollutant which is believed to be preventing or impairing suich water quality and the amount of each such toxic pollutant discharged by each such source. At a minimum, the Administrator shall consider for listing any navigable waters for which any person submits a petition to the Administrator for listing not later than 120 days after the last day of the submittal period.

Not later than one year after the date of publication of the required list, the Administrator, in cooperation with the states, shall issue proposed regulations setting forth, for each segment of the navigable waters listed, an individual control strategy. Each individual control strategy shall produce a reduction in the discharge of toxic pollutants from point sources identified by the Administrator through the establishment of effluent limitations and water quality standards which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than three years after the date of promulgation of the final strategy. Not later than 180 days after issuing the proposed regulations, the Administrator shall promulgate each individual control strategy as a final regulation.

The Administrator shall implement each individual control strategy established or promulgated under this subsection by modifying or requiring the modification of permits under section 402 of the Act.

Subsection (b) amends the citizen suits provision of section 509 of the Act to allow interested persons to bring a legal action for review of the Administrator's promulgation of individual control strategies under section 5.

SECTION 6—POLICY FOR CONTROL OF NONPOINT SOURCES OF POLLUTION

Section 6 adds to section 101(a) of the Federal Water Pollution Control Act the statement that it is the national policy that plans for the control of nonpoint source pollution be developed and implemented in an expeditious manner, so as to enable the goals of the Act to be met through the control of both point and nonpoint sources of pollution. The intent of this section is to emphasize the importance of controlling nonpoint sources of pollution, together with point sources, so as to achieve the water quality goals of the Act.

SECTION 7—CONTROL OF NONPOINT SOURCES OF POLLUTION

This section adds a new section 319 to Title III of the Federal Water Pollution Control Act, to provide for nonpont source control implementation programs.

Subsection (a) of new section 319 provides that the Governor of each state shall prepare and submit to the Administrator for his approval a report which:

—identifies those portions of the navigable waters within the state which, as a result of pollution from nonpoint sources in whole or in part, are not meeting applicable water quality standards or the goals or requirements of the Act;

—identifies those categories and subcategories of nonpoint sources which add significant pollution to each portion of the navigable waters identified under the preceding provision, in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;

—identifies and describes state and local programs for controlling pollution added from nonpoint sources to and improving the quality of, each such portion of the navigable waters, including but not limited to those programs which are receiving Federal assistance;

—describes the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control nonpoint sources of pollution.

Subsection (b) of new section 319 provides that the Governor of each state shall prepare and submit to the Administrator for his approval:

—a plan which the state proposes to implement, in the first four fiscal years beginning after the date of submission of the plan, for controlling pollution from nonpoint sources;

—a report which identifies each department, agency, or instrumentality of the United States, and each department, agency, or instrumentality of the state, which is likely to be engaging in, supporting or providing financial assistance for any activity or program in the state which, if carried out, would be inconsistent with implementation of the state's plan for controlling nonpoint sources. This report is to recommend to the Administrator methods by which each Federal department, agency or instrumentality could modify such activity or program and methods by which the state intends to modify administration of its activity or program so that the activity or program is consistent with and assists the state in implementation of its plan for control of nonpoint sources.

Each plan proposed for implementation must specify:

—for those portions of navigable waters significantly affected by nonpoint pollution, the particular portion of navigable waters and the land area contributing such pollution with respect to which the state plans to assist, encourage, or require implementation of best management practices and measures in the first four fiscal years beginning after the date of submission of the plan;

—the order in which, and the schedule under which, the state plans to assist, encourage, or require implementation of such practices and measures in such fiscal years;

—the categories and subcategories of nonpoint sources of pollution with respect to which the state plans to assist, encourage, or require implementation of such practices and measures;

—the best management practices and measures, the implementation of which the state plans to assist, encourage, or require;

—the methods by category and subcategory of sources of pollution which the state plans to use to assist, encourage, or require;

—the methods by category and subcategory of sources of pollution, which the state plans to use to assist, encourage, or require implementation of such practices and measures; and

—sources of Federal and other assistance which will be available for supporting implementation of such practices and measures for which the assistance will be used in each of the fiscal years.

Each plan submitted by a state under this subsection shall be accompanied by a certification of the Attorney General of the State, or the chief attorney of any state water pollution control agency, that the laws of the state provide adequate authority to implement the plan or, if adequate authority does not exist, a list of the additional authority which will be necessary to implement the plan.

The implementation schedule must establish for each category and subcategory of nonpoint sources of pollution an expeditious period for implementation of best management practices and measures and shall include the estimated dates for implementation of these practices and measures.

In developing and implementing a plan under this section, a state is required, to the maximum extent practicable, to utilize local, public and private agencies and organizations which have expertise in control of nonpoint sources of pollution.

The states are directed, to the maximum extent practicable, to develop and implement nonpoint source control plans on a watershed-by-watershed basis.

Subsection (c) of new section 319 requires that any report required by subsection (a) and any plan and report required by subsection (b) shall be developed in cooperation with local, regional and interstate agencies, and shall be submitted to the Administrator during the 270-day period beginning on the date of enactment of this legislation, except that, upon request of the governor, the Administrator shall extend this period for not to exceed an additional 270 days.

If the governor of a state does not submit the report required by subsection (a) during such period (the report describing nonpoint source problems in state waters and existing state programs and practices), the Administrator is to prepare the report for the state.

Subsection (d) of new section 319 directs the Administrator to consolidate recommendations for modifications of activities and programs of the Federal Government submitted by the states and submit these consolidated recommendations to the appropriate departments, agencies and instrumentalities of the United States. Each such department, agency or instrumentality, to the maximum extent practicable and consistent with existing law, must accommodate these recommendations and carry out its own activities and programs in a manner which is consistent with and will assist implementation of the state's nonpoint source pollution control plan.

Subsection (e) of new secton 319 provides that, subject to paragraph 2, not later than 180 days after the date of submission of any report or plan under this section, the Administrator shall either approve or disapprove the report or plan, as the case may be. The Administrator may also approve or disapprove a portion of a plan. If the Administrator does not disapprove a report, a plan, or a portion of a plan, in the 180-day period, it is deemed approved. Paragraph 2 provides that if, after notice and opportunity for public comment and consultation with appropriate Federal and state agencies, the Administrator determines that the state plan or any portion of it is not likely to satisfy the goals of requirements of the Federal Water Pollution Control Act, that adequate authority does not exist or adequate resources are not available to implement the plan, or that the plan is not adequate to improve the quality of waters in the state, the Administrator shall disapprove the plan or a portion of the plan with respect to which the Administrator makes his determination. The Administrator must notify the state of any disapprovel and request specific revisions of the plan or portion of the plan necessary to obtain approval. Not later than 90 days after the date of this notification, the state must submit its revised plan to the Administrator for his approval.

Subsection (f) of new section 319 provides that, if a state fails to submit a plan or the Administrator does not approve a plan for the control of nonpoint sources of pollution, a local agency or organization which has expertise in, and authority to, control pollution resulting from nonpoint sources in any area of the state which the Administrator determines is of sufficient geographic size, may, with the approval of the state, request the Administrator to provide technical assistance to it in developing for such area a nonpoint source pollution control plan. The agency or organization must submit its plan to the Administrator for his approval. If the Administrator approves the plan, the agency or organization shall be eligible to receive financial assistance for implementation of the plan upon the same terms and conditions as assistance provided to a state.

Subsection (g) of new section 319 provides that, upon request of the state, the Administrator may provide technical assistance to the state in developing a nonpoint source pollution control plan.

Subsection (h) if new section 319 provides that, if any portion of the waters in a state which is implementing a plan approved under this section is not meeting applicable water quality standards because of pollution from nonpoint sources in another state, the state may petition the Administrator to convene, and the Administrator shall convene, a management conference of all states which contribute pollution resulting from nonpoint sources. If, on the basis of information available to him, the Administrator determines that a state is not meeting applicable water quality standards because of pollution from nonpoint sources from another state, the Administrator shall notify the states. The Administrator may convene a management conference under this paragraph not later than 180 days after giving such notification whether or not the state requests the conference. The purpose of the conference is to develop agreement among the states to reduce the level of pollution.

A state contributing significant pollution from nonpoint sources to another state must submit to the Administrator for his approval a nonpoint source pollution control plan to reduce the level of pollution, or, if it has an approved plan, the state must revise the plan to reduce the level of pollution entering the other state.

Subsection (i) of new section 319 provides for grants to states with approved plans for the purpose of assisting the states in implementing the plans. The Federal share of the cost of the plan shall not exceed 30 percent of the cost incurred by the states. However, where the Administrator determines that a significant number of non-Federal, non-state interests in a watershed area are willing and able to enter into agreements to participate in nonpoint source pollution control measures, the grant shall be not less than 50 percent and not more than 60 percent. This bonus grant— of up to 10 percent— is intended to provide a greater incentive for individuals and local organizations to work together to solve nonpoint source pollution problems. The phrase "significant number of interests" is intended to provide the administrators of this program with the flexibility to include landowners, farmers, conservation districts, national resource districts, or other suitable regional nongovernmental organizations which may be functioning within a watershed, regardless of the size of the interest.

The state must enter into agreements with the Administrator of the Environmental Protection Agency to assure that the state will maintain its aggregate expenditures for programs for controlling pollution added to the navigable wates in the state from nonpoint sources and for improving the quality of waters in the state from nonpoint sources and for improving the quality of waters at or above the average level of such state expenditures in the two fiscal years preceding the date of enactment of this subsection.

Each state which receives a grant under this section must submit to the Administrator a written report which describes the activities and programs carried out in the state under the grant and the progress made by such state in meeting the schedule specified under its state plan.

No grant may be made in any fiscal year to a state which in the preceding fiscal year received a grant under this section, unless the Administrator determines that the state made satisfactory progress in meeting the schedule specified by the state in its submitted and approved plan.

Not more than 15 percent of the amount appropriated to carry out this section may be used to make grants to any one state, including any grants to any local public agency or organization with authority to control pollution from nonpoint sources in any area of the state.

Beginning with fiscal year 1988, the Administrator is authorized to give priority in making grants, and shall give consideration in determining the Federal share of any grants, to any state which has included effective regulatory mechanisms in any approved state plan and has implemented such mechanisms in the preceding fiscal year. Such mechanisms shall include, but not be limited to, deadlines to implementation of best management practices and enforcement procedures to ensure implementation of the state's plan.

There is authorized to be appropriated to carry out this grant program not to exceed $150 million per fiscal year for fiscal years 1986 through 1990.

Not later than January 1, 1986, and each January 1 thereafter, the Administrator is to transmit to the Committee on Public Works and Transportation of the House and the Committee on Environment and Public Works of the Senate, a report for the preceding fiscal year on the activities and programs implemented under this section and the progress made in reducing pollution in the navigable waters resulting from nonpoint sources and improving the quality of these waters.

The Administrator is to transmit to Congress not later than January 1, 1989, a final report on the activities carried out under this section. This report, at a minimum, is to include:

—an analysis of the effectiveness of plans carried out under this section, and of the best management practices and measures utilized under those plans in controlling nonpoint sources of pollution;

—an analysis of the level of state participation in implementing such plan;

—recommendations of the Administrator concerning future programs, including enforcement programs, for controlling pollution from nonpoint sources.

Not less than 5 percent of the funds appropriated to carry out this section shall be available to the Administrator to maintain personnel levels at the Environmental Protection Agency which are adequate to carry out this section.

SECTION 8—LAKE RESTORATION GUIDANCE MANUAL

Section 8 amends subsection 104(h) of the Federal Water Pollution Control Act to require the Administrator to submit a lake restoration guidance manual to the House Committee on Public Works and Transportation and the Committee on Environment and

Public Works of the Senate. The manual, to be submitted not later than one year after date of enactment of H.R. 8, shall establish procedures to guide future state and local efforts to improve water quality in lakes.

Subsection 104(h) of the Act currently authorizes the Administrator to enter into contracts with or make grants to public or private agencies for the purpose of developing and demonstrating new or improved methods for the prevention, removal, reduction, and elimination of pollution in lakes. As part of this effort, the Committee understands that EPA's Office of Research and Development has spent considerable time and resources on an evaluation of the effectiveness of lake quality improvement techniques. It was expected that a guidance manual would be developed based on this work. This has not been done. The Committee believes that a guidance manual will significantly assist future state and local efforts to improve lake quality. Becaus the bulk of the background work has been done, the Committee is confident that a year or less is sufficient time for EPA to complete and submit this manual.

SECTION 9—SMALL FLOWS CLEARINGHOUSE

This section provides for the establishment and support of a national clearinghouse within the Environmental Protection Agency to collect and disseminate information on small flows of sewage and innovative or alternative wastewater treatment processes and techniques. The Administrator is to make available from amounts that are set aside under section 205(i) of the Act for innovative and alternative technology projects and which are not obligated within the required two year period, $1,000,000, or such lesser amounts as are available, for support of the clearinghouse.

SECTION 10—ELIGIBLE CATEGORIES OF PROJECTS

Subsection (a) of section 10 amends section 201(g)(1) of the Federal Water Pollution Control Act by adding projects to address water quality problems due to impacts of discharges from combines storm water and sanitary sewer overflows to the list of categories which are eligible for Federal grant assistance.

Subsection (b) of section 10 provides that the twenty percent of grant funds which may be used for otherwise ineligible categories at a Governor's request may also be used for control of nonpoint sources of pollution, including innovative and alternative approaches for the control of such pollution.

SECTION 11—TIME LIMIT ON RESOLVING CERTAIN DISPUTES

This section provides that in any case in which a dispute arises with respect to the awarding of a contract for construction of treatment works by a grantee of funds under this title and a party to such dispute files an appeal with the Administrator for resolution of the dispute, the Administrator shall make a final decision on the appeal within 60 days of the filing of such appeal.

SECTION 12—FEDERAL SHARE

Subsection (a) of section 12 amends section 202(a)(1) of the Act by adding projects to address water quality problems due to impacts of discharges from combines storm water and sanitary sewer overflows. This is the subsection which provides that projects which have received a step three construction grant before October 1, 1984, will continue to receive a Federal grant of 75 percent until completion.

Subsection (b) of section 12 provides that, in the case of any project for which an application for a grant has been made before October 1, 1984, and which project is under judicial injunction on such date prohibiting its construction, the project shall still be eligible for grants of 75 percent of the construction cost.

Subsection (c) of section 12 amends section 202(a)(3) of the Act. This section authorizes the Administrator to make grants to fund all the costs of the modification or replacement of any facilities constructed with a grant made available for innovative technology if the Administrator finds that the facilities have not met design performance, unless the failure is attributable to negligence on the part of any person.

Subsection (c) amends this provision by providing that, in addition, the Administrator is authorized to make a grant to fund all the costs of the modification or replacement of biodisc equipment (rotating biological contractors) in any publicly owned treatment works if the Administrator finds that the equipment has not met design performance specifications, unless the failure is attributable to negligence on the part of any person, and if the failure has significantly increased capital or operating and maintenance expenditures.

Subsection (d) provides that the activated bio-filter feature for treatment works of the City of Little Falls, Minnesota, shall be deemed to be an innovative wastewater process and technique and shall be eligible for the increased grants which the Act makes available for innovative technology projects.

The Little Falls project is designed to use activated bio-filters (ABFs) in its treatment system. ABFs, have been used in wastewater systems before, but not as they would be used in Little Falls. In Little Falls, the ABF component will be part of the second stage in a trickling filter system. The innovative classification is appropriate because there exists little or no performance data on the optimum loadings, sizing, and other considerations with which the application can be designed without some risk. There is no other situation of ABFs having been used exactly as is being proposed in the Little Falls treatment works. In addition, there is doubt about how the extreme cold of Minnesota winters will affect performance.

SECTION 13—AGREEMENT ON ELIGIBLE COSTS; GRANTEE CERTIFICATION OF TREATMENT PROCESS; TURNKEY CONTRACTS

Section 203(a) of the Federal Water Pollution Control Act requires each applicant for a grant to submit to the Administrator for his approval plans, specifications and estimates for each proposed project for the construction of treatment works for which a grant application is made. Section 13(a) amends this provision to provide that before taking final action on such plans, specifications and estimates, the Administrator must first enter into an agreement with the applicant which establishes and specifies to the extent practicable which items to the proposed project are eligible for Federal payments under this section. Once this agreement has been entered into, the Administrator may not refuse to make payments for the Federal share of those reasonable costs of any item specified in the agreement which are incurred on the project.

Under current law, once the Administrator approves a grant applicant's plans, specifications, and estimates, the approval constitutes a contractual obligation of the United States for payment of the Federal Government's proportional contribution to the project covered by the grant. Current agency audit procedures permit construction grants to be obligated only for allowable costs. However, these costs are not determined until a final audit of the project grant is conducted. Thus, an EPA auditor is in a position to and often does reevaluate and override during the final audit process the previously approved allowable costs, despite the fact that the agency approved the plans and specifications for the project prior to obligation of the grants funds. This practice subjects grant recipients to a great deal of vulnerability during the audit process and leads, in some instances, to substantial and unplanned financial burdens for the grantee.

The purpose of section 13(a) is to emphasize and effectuate the Committee's intent that award to a grantee of a Title II wastewater treatment construction grant constitutes a binding contractual obligation of the Federal government. Where the Adminsitrator approves an agreed-upon specific project for grant funding, then under this provision the United States is contractually obligated to fund that project as it was approved, so long as the grantee acted in good faith and in accordance with the grant agreement and the costs are not in violation of Federal law. In this manner, the agency's dealings with the states and with grantees will be on a more reliable and business-like basis, with all parties knowing what costs are allowable for grant funding.

The Committee intends that the Administrator, in implementing section 13, will continue to review plans, specifications, and estimates to ensure that wastewater treatment projects are cost effective.

Section 13(a) also provides that the approval of construction plans and specifications by the Administrator under Section 203(a) shall not include a determination or approval of the treatment work's unit processes, or the configuration of the treatment work's unit processes, which constitute the treatment technology. In addition, the Administrator is not to approve plans, specifications or estimates for a project unless the applicant certifies that the proposed unit processes and treatment technology are capable of meeting the effluent limitations for which they are designed. The purpose of this amendment is to increase the accountability of those involved in the design and construction of publicly owned waste treatment works for the performance of the facility.

The 1981 amendments to the Federal Water Pollution Control Act addressed this problem in part by requiring that the engineer or engineering firm supervising construction or providing architect services during construction shall continue its relationship to the grant applicant for a period of 1 year after the completion of such treatment works. That specific provision went on to provide that at the end of the 1-year period, the "owner and operator of such treatment works shall certify to the Administrator whether or not such treatment works meet the design specifications and effluent limitations contained in the grant agreement and permit * * * for such works." The 1981 provisions also require that, if the treatment works does not meet its required level of performance, corrections must be made "at other than Federal expense." But the provision does not clear up the numerous factors that contribute to the performance problem in the first place, and to the overlapping and ambiguous lines of responsibility and accountability between all of those involved in the typical grant project. This accountability/responsibility problem stems from the fact that Federal and State officials often involve themselves, both formally and informally, in influencing the nature of the design or process technology to be used in a treatment works, rather than limiting their review to the more traditional areas of the bidability of a project's plans and specifications, and the buildability of whatever it is that was designed.

The approach in subsection (a) would eliminate Government agency involvement in "process" design, leaving the design engineer with that responsibility, as he is normally licensed and required to do, and indeed more appropriately qualified to do. It would, however, retain primary responsibility for reviewing the adequacy and integrity of the structural and physical design of a project with the Government, which is traditionally one of the latter's more appropriate roles.

Subsection (b) allows construction of sewage treatment works utilizing turnkey contracts. This is a contract whereby the community hires one agent who will be responsible for the total design and construction of the treatment system. After completing that project, when it has been determined that the project works properly, then that agent "turns over the keys" to the plant to the municipal government or treatment authority. Then, and only then, does the agent receive final payment.

Subsection (b) provides that after completion of an approved facility plan for a treatment works that has an estimated total cost of $8,000,000 or less, the applicant proposing to construct the treatment works may, in lieu of proceeding under the other provisions of Title II of the Act, enter into an agreement with the Administrator for the preparation of construction plans and specifications and the building and erection of such treatment works.

The agreement must set forth an amount agreed to by the Administrator and the applicant as the maximum Federal contribution to the project, based upon a determination of the Federally eligible costs of the project at the applicable Federal share under section 202 of the Act; set forth a date for completion of construction of the treatment works by the applicant and a schedule of payments by the Administrator of the Federal contribution to the project; contain such assurances by the applicant as the Administrator may require that (1) the proposed treatment works will be an operable unit and will meet all the requirements of title II (except as otherwise provided in this section), and (2) not later than one year after the date specified as the date for completion of construction of the treatment works; assure that the treatment works will be operating so as to meet the requirements of any applicable permit for the treatment works under section 402 of the Act; require the applicant and any agent or contractor of the applicant to provide a bond in an amount determined necessary by the Administrator to protect the Federal interest in the project; and contain such other terms and conditions as the Administrator deems necessary to ensure compliance with Title II.

Upon entering into an agreement under this subsection, the Administrator must deposit, from amounts allotted to the State, the amount of the Federal contribution to the project agreed upon by the Administrator and the applicant into an interest-bearing account. Such amount shall be available only for making payments to the grantee in accordance with the schedule contained in the agreement.

Interest earned on amounts in the account is available for payments to the grantee. Such payments shall be made solely for the purpose of reducing the net interest costs incurred by the grantee on obligations issued by the grantee for construction of the treatment works. The amount of these payments shall be in addition to the Federal share of the project otherwise allowable. The amount of any such interest earned which exceeds the amount of such interest costs incurred shall be deposited in the general fund of the Treasury after the final audit of the project.

The Administrator must reserve a portion of the amount in the account until the final audit of the project. If the amount deposited into the account by the Administrator exceeds the cost of preparing construction plans and specifications and the building and erection of the treatment works, the Administrator shall reallot the amount of the excess to the state in which such treatment works are located for the fiscal year in which the audit is completed.

The Administrator cannot obligate more than 20 percent of the amount allotted to a state for a fiscal year under section 205 of the Act for grants for turnkey projects.

In any case in which the recipient of a grant made pursuant to this subsection does not comply with the terms of the agreement, the Administrator is authorized to take such action as may be necessary to recover the amount of the Federal contribution to the project.

A recipient of a grant made pursuant to this subsection shall not be eligible for any other grants under Title II.

SECTION 14—GRANT CONDITIONS—USER CHARGES ON LOW-INCOME RESIDENTIAL USERS

Subsection 14(a) amends section 204(a)(1) of the Federal Water Pollution Control Act to require the Administrator, before approving sewage treatment construction grants for any project, to determine that either any required areawide waste treatment management plan under section 208 is being implemented for such area and the proposed treatment works are included in such plan or that reasonable progress toward implementation is being made.

Subsection 14(b) amends section 204(a)(2) of the Act and requires similar conformance with plans and reports in sections 303(e) and 305(b) of the Act.

The amendments made in subsections (a) and (b) of section 14 shall take effect two years after the date of enactment of this legislation.

Section 204 of the Act establishes certain conditions that the Administrator must assure are met before making grants. It provides at present that projects receiving funding must be part of existing plans and in conformance with sections 303(e) and 305(b). The amendments in section 14 are designed to provide additional assurance that consistent program progress will be maintained by focusing on implementation.

The Section 208 program provides for the development of areawide waste treatment plans. Grant monies under section 208 are to be made available to identify pollution problems and decide on a management plan to address the problems. Section 303(e) requires each state to have a continuing planning process. Section 305(b) requires submission by each state every two years of a report on the water quality situation for that state.

The Committee, by adopting these amendments in section 14, intends that the programs of areawide planning and consistency with plans and programs to meet the goals of the Act be pursued. The plans developed under section 208, for instance, are not to be static documents to be written and ignored. The Committee expects to see these plans implemented in order to meet the goals of the Act. Similar use is expected of 303(e) and 305(b) requirements.

Section 204(b)(1) of the Federal Water Pollution Control Act provides that, notwithstanding any other provisions of the Act, the Administrator shall not approve any grant for any treatment works unless he shall first have determined that the applicant has adopted or will adopt a system of charges to assure that each recipient of waste treatment services within the applicant's jurisdiction will pay its proportionate share of the costs of operation and maintenance of any waste treatment services provided by the applicant.

Section 14(c) amends this by providing that a system of user charges which imposes a lower charge for low-income residential users, as defined by the Administrator, shall be deemed to be a user charge system meeting the requirements of section 204, if the Administrator determines that the system was adopted after public notice and hearing. Any additional user charges required of other users of the waste treatment services resulting from application of this subsection are to be determined in accordance with the proportionality requirements of section 204.

SECTION 15—ALLOTMENT OF CONSTRUCTION GRANT FUNDS

Subsection (a) of section 15 includes conforming amendments to section 205(c)(2) of the Federal Water Pollution Control Act which provides for allotment of funds authorized to be appropriated for the Construction Grants Program, and specifies the amount allotted to each state, for fiscal years through fiscal year 1990. Subsection (a) also adds fiscal years 1986 through 1990 so as to conform with section 3 of H.R. 8 which extends and increases the authorizations for construction grants through fiscal year 1990.

Subsection (b) of section 15 amends section 205(e) of the Act so that it conforms with the extension of the construction grant authorizations in section 3 of H.R. 8.

Section 205(e) provides that, for fiscal years 1978, 1979, 1980, 1981, 1982, 1983, 1984 and 1985, no state shall receive less than one-half of one percent of the total allotment under subsection (c) of section 205, except that in the case of Guam, Virgin Islands, American Samoa, and the Trust Territories, not more than thirty-three one-hundredths of one percent in the aggregate shall be allotted to all four of these jurisdictions. For the purpose of carrying out subsection 205(e) there are authorized to be appropriated, subject to such amounts as are provided in appropriation Acts, not to exceed $75,000,000 for each of fiscal years 1978, 1979, 1980, 1981, 1982, 1983, and 1984 and 1985.

Subsection (b) of section 15 also adds fiscal years 1986 through 1990 to section 205(e) and changes the maximum amount available to Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, and the Trust Territories from one-third of one percent to two-thirds of one percent in order to better meet their water quality needs.

Subsection (c) amends section 205(g)(1) of the Act so that it will conform with the extension of the Construction Grants Program in section 3 of H.R. 8. Section 205(g)(1) authorizes the Administrator to reserve not to exceed four percent of a state's allotment of construction grant funds for the purpose of making grants to the state for the costs of administering aspects of the construction grants program which the Administrator has delegated to the state.

Subsection (d) also amends section 205(g)(1) by adding a provision that the Administrator shall reserve each fiscal year beginning after September 30, 1985, $900,000 from the sums available to the State of New York under the subsection for such fiscal year, $900,000 from the sums available to the State of New Jersey under the subsection for such fiscal year, and $200,000 from the sums available to the State of Connecticut under the subsection for such fiscal year. These sums shall be used by the Administrator to make a grant for each such fiscal year to the Interstate Sanitation Commission established by these States by interstate compact to carry out the functions of such Commission under the Federal Water Pollution Control Act. The Commission is an environmental agency of the States of New Jersey, New York, and Connecticut, established by an interstate compact having the consent of Congress. Among other things, the Commission has jurisdiction of a regulatory character over water quality in the tidal waters of the northeastern New Jersey, southeastern New York, southwestern Connecticut Metropolitan Area. Specifically, the Interstate Sanitation District includes the Hudson River from the Bear Mountain Bridge to the ocean, Raritan and Sandy Hook Bays, the waterways of the New York Harbor Complex, and Long Island Sound westerly of a line from New Haven to Port Jefferson. The Commission monitors receiving waters and effluents, administers water quality standards, makes regulations containing both effluent limitations and receiving water quality standards, and has authority to enforce its regulations.

In view of the Commission's role in administering provisions of the Federal Water Pollution Control Act, the Committee considers it appropriate to provide additional grant assistance to the Commission under section 205(g).

Subsection (e) amends section 205(h) of the Act which relates to alternatives to conventional sewage treatment works in rural areas. Section 205(h) provides that the Administrator shall set aside four percent of the sums allotted to a State with a rural population of 25 percent or more. The Administrator is also authorized to set aside not more than four percent of the allotted funds for any other State at the request of the Governor. These funds are to be used only for alternatives to conventional treatment works for municipalities having a population of 3,500 or less, or for highly dispersed sections of larger municipalities.

Subsection (e) of section 15 amends these provisions by changing the four percent mandatory set-aside to provide that it shall be a minimum of four percent, but shall be increased to as much as seven and one-half percent at the request of the Governor. Also, the authorization of a discretionary set-aside for other states of up to four percent at the request of the Governor is changed to authorize a set-aside of up to seven and one-half percent. The purpose of the amendment is to ensure that the sewage treatment needs of smaller communities are more adequately met.

Subsection (f) of section 15 is a conforming amendment to section 205(i) of the Act so that it will be consistent with the extension of the authorization for construction grants contained in section 3 of H.R. 8. Section 205(i) provides that a total (as determined by the governor of a state) of not less than four percent nor more than seven and one-half percent of the construction grant funds allotted to a state shall be used only to increase the Federal share of construction grants for construction of treatment works utilizing innovative or alternative processes and techniques. The increase in the grant for such treatment works is twenty percent greater than the Federal share established in section 202(a)(1), but in no event greater than eighty-five percent.

Subsection (g) of section 15 amends section 205(j)(3) of the Federal Water Pollution Control Act which directs the Administrator to reserve each fiscal year not to exceed one percent of the sums allotted and available for obligation for each state for water quality management planning. Subsection (g) provides that the state shall allocate at least 50 percent of the amount granted to the state for a fiscal year under the section to regional interstate public comprehensive planning organizations in the state, except in any fiscal year for which the Administrator, after consultation with the governor of any state, determines that allocation of at least 50 percent to such organizations will not substantially assist in achieving the goals of the Act.

In the Municipal Wastewater Treatment Construction Grants Amendments of 1981 (P.L. 97-117), a new subsection, 205(j), was added to provide assured funding for a variety of planning purposes. The set-aside is to be for water quality management planning including, among other things: identifying cost effective and locally acceptable point and non-point measures; developing implementation plans; identifying water quality problems; and determining which publicly owned treatment works should be built, and for implementation of section 303(e) of the Act.

A key part of the provision in the 1981 Amendments, which is now a part of the Federal Water Pollution Control Act, is:

> (3) In carrying out planning with grants made under paragraph (2) of this subsection, a state shall develop jointly with local, regional, and interstate entities, a plan for carrying out the program and give funding priority to such entities and designated or undersignated public comprehensive planning organizations to carry out the purposes of this subsection.

Subsection (g) reinforces the original intent to have these organizations carry out a significant part of the program under section 205(j). Such comprehensive planning organizations are assured at least 50 percent of Section 205(j) funds. There is an exception to this requirement where the Administrator of EPA, after consultation with the governor, determines that pass through will not have any significant impact on achieving regional or interstate participation. It is the Committee's intent that any decision not to pass through funds to comprehensive planning organizations should be made only where the state advises against a pass through and only where the Administrator makes a finding that pass through will not assist in achieving the Act's goals.

Subsection (h) of section 15 adds a new subsection to section 205 of the Federal Water Pollution Control Act which provides that 1/4 of 1 percent of any amount appropriated for the Construction Grants Program for any fiscal year after fiscal year 1985 shall be reserved by the administrator for carrying out investigations and audits authorized by the Act of projects for which funds are made available under Title II.

This provision is based on information obtained by an investigation conducted by the Committee's Subcommittee on Investigations and Oversight. In 1981, that Subcommittee investigated problems associated with the construction of treatment works and the adequacy of EPA auditing procedures.

At the time of the Subcommittee's review, the EPA Office of Inspector General's (OIG) resources were so inadequate that it was facing a 70 work-year backlog in audit requests. Further, the OIG had virtually no investigators in two of the EPA's audit regions covering 27 states which had more than $10 billion in active Construction Grants Program projects. Information recently obtained by the Subcommittee indicates that the EPA is still confronted with a backlog of as many as $1 billion worth of wastewater treatment projects in need of final audits.

Subsection (h), which would result in the allocation of some $6 million annually to the Inspector General's Office at the current level of Construction Grants Program authorizations, will help insure the integrity of the program and the protection of the public's investment in these wastewater treatment facilities.

SECTION 16—GRANTS TO STATES FOR ESTABLISHMENT OF WATER POLLUTION CONTROL REVOLVING FUNDS

Section 16 adds to Title II of the Federal Water Pollution Control Act a program for grants to states for establishment of water pollution control revolving funds.

Subsection (a) of new section 220 directs the Administrator to make a grant to each state for the purpose of establishing a Water Pollution Control Revolving Fund for providing assistance to municipalities and intermunicipal and interstate agencies for construction of treatment works as defined in section 212 of the Act which are publicly owned.

Subsection (b) provides that, before receiving a grant, the state must first deposit in the fund an amount equal to 20 percent of the amount allotted to the state for a fiscal year. In addition, the Governor may deposit not to exceed twenty percent of the amount allotted to the state under section 205 (construction grant funds), if the state has deposited from non-Federal funds an amount equal to twenty percent of the section 205 funds to be deposited.

Each state must submit annually to the Administrator a certification that, upon completion of any project for treatment works for which financial assistance is made available under this section, discharges from such treatment works will meet all applicable requirements necessary to achieve applicable state and Federal water quality standards. The state must further certify that it will comply with all provisions of section 16.

Subsection (c) of new section 220 provides that a state may use amounts in the Revolving Fund only to make loans, loan guarantees, payments to reduce interest on loans and loan guarantees, bond interest subsidies, and bond quarantees to municipalities and intermunicipal and interstate agencies, or purchase of insurance for obligations. A state may also use the fund as security for revenue bonds issued to finance construction of treatment works.

Subsection (d) provides that each state shall establish a Water Pollution Control Revolving Fund to provide assistance under this section. The state must deposit in the revolving fund any Federal funds allotted to the state under this section, any amounts received by the state for repayment of loans made by the state with amounts in the fund, any amounts required to be deposited in the fund under subsection (b)(1) (state 20 percent share and up to 20 percent of construction grant funds) and any additional funds which the state wishes to deposit in the fund.

A state may use amounts in the fund for the payment of expenses of administration of the fund, but no more than four percent of the grant amount may be used for this purpose.

A state may invest any portion of the funds in the revolving fund which is not currently needed for providing assistance from the fund. A state may make assistance available from the Revolving Fund established by the state to finance the costs of facility planning and the preparation of plans, specifications and estimates for construction of publicly owned treatment works. If the grant recipient under this subsection ulimately receives a construction grant from the Environmental Protection Agency which includes reimbursement for non-Federal funds expended for planning and engineering, the recipient must promptly repay the loan to the extent of the allowance it receives from the Environmental Protection Agency.

A state may provide assistance under this section to a municipality or intermunicipal or interstate agency with respect to the non-Federal share of the costs of a project for which such municipality or agency is receiving assistance from the Administrator under any other section of Title II.

A state may provide assistance from a revolving fund to a municipality or intermunicipal or interstate agency for the non-Federal share of the costs of a project which is receiving assistance under the construction grants program.

A state may only make a loan from the revolving fund if the recipient establishes a dedicated source of revenue for repayment of the loan.

A state may provide financial assistance from the revolving fund only for projects which are on the state priority list. Assistance may be provided regardless of the rank of a project on the priority list.

Subsection (e) requires each state to annually make a full and complete report to the Administrator concerning the use of Federal funds made available under this section in such manner as the Administrator shall prescribe. Also, at least annually, the Administrator shall conduct, or require each state to have independently conducted, reviews and audits as may be deemed necessary and appropriate by the Administrator to carry our the objectives of this section. Audits of the use of Federal funds shall be conducted in accordance with the auditing procedures of the General Accounting Office.

Subsection (f) states that the provisions of Title II of the Federal Water Pollution Control Act shall not apply to financial assistance under new section 220 except to the extent specifically provided in new section 220. The purpose of this provisions is to give states maximum flexibility in the use of the revolving fund.

Subsection (g) of new section 220 authorizes to be appropriated to carry out this section not to exceed $600,000,000 per fiscal year for each of the fiscal years 1986 through 1990, $2,400,000,000 for fiscal year 1991, $1,800,000,000 for fiscal year 1992, $1,200,000,000 for fiscal year 1993, and $600,000,000 for fiscal year 1994. These funds are to be allotted by the Administrator in accordance with the same table which provides for allotment of Construction Grant funds. Sums allotted to a state for a fiscal year shall remain available for a grant to such state for the fiscal year for which authorized and for the following two fiscal years as well. Any funds granted to a state for a fiscal year under this section which are not utilized by such state for any of the purposes of this section during such fiscal years shall be repaid to the Administrator for reallotment among the other states.

The revolving fund was intentionally developed to provide maximum flexibility to the states. The Committee believes this program should be maintained primarily as a state-controlled effort, with mandatory Federal requirements, policies, and practices kept to an absolute minimum. The Committee will, however, exercise its oversight responsibilities to assure that the states manage the program to optimize the benefits to localities in their efforts to meet the requirements of the Federal Water Pollution Control Act.

Many communities on state priority lists for construction grants funding are too low on the lists to receive grants. Others may not receive the grants as quickly as they are prepared to go forward. The revolving fund is intended to provide resources to the states which will enable them to better meet the requirements of the Act. The fund can be used for a project anywhere on the priority list and can be used in combination with grant funds. The $9 billion authorization over nine years will provide for permanent funds among the states totalling $10.8 billion nationwide, including $1.8 billion in state monies. In addition, the authority to deposit up to twenty percent of construction grant funds could result in a maximum additional amount of $2.88 billion, including $480 million in state monies.

SECTION 17—INNOVATIVE TECHNOLOGY COMPLIANCE DEADLINES FOR DIRECT DISCHARGERS

Section 310(k) of the Act provides that, in the case of any facility which proposes to comply with the requirements of best available technology by replacing existing production capacity with an innovative production process, which will result in an effluent reduction significantly greater than that required by the otherwise applicable effluent limitation or with the installation of an innovative control technique that has a substantial likelihood for enabling the facility to comply with the applicable effluent limitation by achieving a significantly greater effluent reduction than that required by the applicable limitation, the Administrator may establish a compliance date no later than July 1, 1987—three years later than the final compliance date otherwise provided in the Act. Section 17 amends this provision, changing the compliance date from July 1, 1987, to a date two years after the date for compliance with the effluent limitation which is otherwise applicable.

In the period since the 1977 Amendments, there have been delays in final promulgation of effluent guidelines. This is in large part what has led to extension of the compliance deadlines in section 4 of H.R. 8. There is still potential for the kinds of innovative processes contemplated by the 1977 Amendments. For this reason, the section 301(k) innovative technology extension is continued and is to be no later than two years after the date for compliance with effluent limitations otherwise applicable.

SECTION 18—VARIANCES FROM THE APPLICATION OF EFFLUENT LIMITATIONS

This section adds a new subsection (n) to section 301 of the Federal Water Pollution Control Act. Section 301 requires compliance with effluent limitations based on best practical, best available, and best conventional technologies.

The new subsection provides that upon application of any person who provided (or did not have a reasonable opportunity to provide) information to the Administrator in the rulemaking to establish or revise any effluent limitation under section 301 or section 304 of the Act, the Administrator may grant a variance from the application of the limitation with respect to the discharge by the person of any pollutant if the Administrator determines that factors relating to the facilities, equipment, and processes of the person are fundamentally different than the factors considered in the establishment of the effluent limitations.

In the application of national effluent guidelines, the Environmental Protection Agency developed a fundamentally different factors (FDF) determination procedure. Under this procedure, EPA required a facility to first submit a petition demonstrating that there is some factor in its situation that is fundamentally different from those considered in establishing the national regulation. Only information not previously considered could be the basis for an FDF determination petiton.

To establish a fundamental difference, a facility had to show that compliance with the national limits would result in either a removal cost wholly out of proportion to the removal cost considered by the Agency during the development of the national regulation or a fundamentally more adverse non-water-quality impact.

Any alternative technology based limits could reflect only the degree of modification actually required by the fundamental difference.

Finally, in order to insure that all points of view were considered, the public was informed of applications for FDF determinations and given the opportunity to participate in the proceeding.

The FDF determination procedure is a procedure through which a facility receives an individualized determination of its technology-based effluent requirements. As such, it is analogous to the Agency's use of best professional judgment permit determinations to establish effluent limitations for industrial facilities whose national effluent guidelines have not been issued.

In 1983, the Third Circuit Court of Appeals held that EPA did not have authority to issue FDF variations for pretreatment requirements applicable to indirect dischargers, and, by implication, effluent limitations for direct dischargers. This decision was recently overturned by the United States Supreme Court.

Section 18 recognizes EPA's authority to grant FDF variances, but places limitations on it to prevent its misuse.

An application for a variance must be made within 180 days after the establishment or revision of an effluent limitation for which a variance is sought. If the application is denied, the applicant must comply with the original compliance date for the limitation. E.P.A. is directed to take prompt action in making a decision, and is directed to do so within 180 days, to the maximum extent practicable.

Section 18 applies only to effluent limitations established or revised after the date of enactment of H.R. 8. The granting of variances from effluent limitations established or revised prior to the date of enactment is to be in accordance with procedures established before the date of enactment. Also, the amendment made by Section 18 shall not affect any procedures or requirements in effect before the date of the enactment of H.R. 8 with respect to the granting of variances from the application of effluent limitations established or revised on or before the date of the enactment of H.R. 8 with respect to the granting of variances from the application of effluent limitations established or revised on or before the date of enactment in accordance with any provision of the Federal Water Pollution Control Act.

Factors which may be considered to be fundamentally different under section 18 include the nature or quality of pollutants contained in the raw waste load of the applicant's process wastewater; the volume of the discharger's process wastewater and effluent discharged; non-water quality environmental impact of control and treatment of the discharger's raw waste load; energy requirements of the application of control and treatment technology; age, size, land availability, and configuration as they related to the discharger's equipment or facilities; processes employed; process changes; engineering aspects of the application of control technology; and the cost of compliance with required control technology. A variance request or portion of such a request under this section shall not be granted on any of the following grounds: the infeasibility of installing the required waste treatment equipment within the time the Act allows; the assertion that the national limits cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factors listed above; the discharger's ability to pay for the required waste treatment; or the impact of a discharge on local receiving water quality.

There are two approaches for responding to a facility with valid grounds for arguing that it is fundamentally different from other facilities in its category. One possibility is to develop a separate subcategory within the regulation, undertake a separate data collection and analysis effort and then repropose and issue the final rule. The other alternative is to leave the national rule in place and use the FDF determination procedure to establish alternative technology-based limitations for the facility that accurately reflect its situation. The subcategorization approach would add further complications and require potentially substantial additional time in developing what are already extraordinarily complex and detailed national regulations. By contrast, the FDF determination procedure allows both implementation of the national rule and consideration of individual petitions claiming unique factors.

The Committee, for these reasons, concludes that the use of the FDF procedure, with the limitations contained in Section 18, will enable the establishment of new effluent limitations to proceed in an efficient manner while still adhering to the goals of the Federal Water Pollution Control Act.

SECTION 19—WATER QUALITY CRITERIA

Section 304(a)(1) of the Act directs the Administrator to develop and publish criteria for water quality accurately reflecting the latest scientific knowledge on the kind and extent of all identifiable effects on health and welfare. Section 19 amends this provision by adding the requirement that, in developing, publishing and revising criteria, the Administrator shall consider, among other things, the effects on the ecosystem of water hardness ph, chemical and physical interactions, persistence of pollutants and the long-term effects of pollutants; sedimentation from chemical reaction of pollutants, the absorptive properties of sediments, resuspension, and bio-uptake.

Section 19 states that EPA, in issuing new or revised water quality criteria, should set criteria which will provide an ample margin of safety to protect human health and fish and wildlife resources. The Committee does not intend, by imposing this "ample margin of safety" test, to indicate that criteria should be set at zero for all substances which may have no proven safety thresholds. The purpose of the new provision is instead to ensure that EPA water quality criteria consider the possibility of risks which have not yet been identified.

Section 19 also adds the requirement that in the development of new or revised criteria with respect to a pollutant, whenever the Administrator determines that a well-founded and significant difference of opinion exists as to the latest scientific and research knowlege on the matters referred to in the section, the Administrator shall publish a description of this difference of opinion along with the publication of the criteria.

Water quality criteria are essential to the establishment of water quality standards, which, in turn, are of fundamental importance to the pollution control scheme envisioned in the Act. The Committee is aware that, in Colorado and some other states, high designated uses—the other water quality standard building-blocks—established through the water quality standards process have been set for some stream segments. A number of commenters have argued that the EPA water quality regulations restricting the modification of water quality goals make it unnecessarily difficult for states to respond in a reasonable fashion to changing circumstances and unforeseen difficulties.

Municipalities and industrial interests in Colorado have indicated this problem appears to be particularly acute where there are low or intermittent flows in receiving streams. This can be caused by natural variations or limitations in runoff, or by man-made diversions or impoundments authorized by state laws governing the allocation of water. The natural presence in receiving waters of toxic metals can also pose problems for attaining designated uses. In addition, the reduced availablility fo Federal funding for advanced waste treatment could increase the economic difficulty faced by affected municipalities in attempting to attain water quality standards.

It has been suggested that states be given the authority to reduce or relax the designated uses of these stream segments through the NPDES permit issuance process. The Committee recognizes the existence of this problem, but it is not convinced that a statutory response is necessary. Instead, the Act and EPA regulations provide an appropriate mechanism for readjusting water quality standards where standards are unattainable.

For example, it has been suggested that some water quality standards in Colorado initially were established without regard to their attainability. If so, the state may review these uses and, if they are found to be unattainable, revised standards may be adopted.

EPA regulations set forth procedures for modifying inappropriate standards through an intergovernmental review process which provides an opportunity for public comment. Thus, for example, standards can be revised to reflect low flow conditions, hydrologic modifications that prevent attainment of the use designated in the standard, natural physical conditions of the stream that preclude attainment of the aquatic life protection use, or if controls needed to meet the standard would result in substantial or widespread economic impact.

None of these criteria lead themselves to a precise, uniform national definition. In reviewing state proposals to revise water quality standards pursuant to these criteria, EPA policy should be flexible enough to accommodate regional variations. For example, in states such as Colorado that are rich in minerial resources, some streams may exhibit natural background concentrations of toxic metals that preclude attainment of a sensitive cold water fishery though other environmental parameters, such as temperature and dissolved oxygen, would sustain such a fishery. In such cases, EPA should recognize the unique hydrogeologic character of such streams and allow the state appropriate flexibility in defining the nature of the aquatic life protection use.

The Committee is aware that the listing of an element as a toxic pollutant under section 307 does not necessarily indicate that the element is toxic to humans in all cases. Water quality criteria established under section 304(a) should reflect available scientific evidence on the extent and circumstances of possible toxic effects. This is true in the case of elemental zinc which, although listed under section 307 of the Act as a toxic pollutant, is generally harmful only to certain species of fish and not to humans.

In section 304(a) of the Federal Water Pollution Control Act, EPA has adopted water quality criteria that are based on the latest scientific knowledge as to the effect of a pollutant on aquatic organisms and human health. The water quality criteria for zinc properly reflects concern for its toxicity to certain fish and other aquatic species, but does not indicate a real concern for human health.

SECTION 20—TEST PROCEDURES

This section changes the date by which the Administrator must promulgate guidelines establishing test procedures for the analysis of pollutants to ninety days after the date of enactment of H.R. 8.

SECTION 21—PRETREATMENT STANDARDS

Section 21 amends section 307 of the Federal Water Pollution Control Act to authorize the owner or operator of a publicly owned treatment works to grant up to a two-year extension for compliance with a categorical pretreatment standard to an indirect discharger that intends to comply with such applicable standard by using an innovative treatment system that meets the criteria specified in section 301(k) of the Act, if (1) the Administrator determines that the innovative system has the potential for industry-wide application and the action will not cause the publicly owned treatment works to violate its NPDES permit, and (2) the Administrator or a state having an approved pretreatment program concurs with the proposed action of the owner or operator of the publicly owned treatment works.

Section 301(k) of the Federal Water Pollution Control Act currently authorizes an extension of the date for compliance with certain best available technology treatment requirements for direct dischargers where the applicable innovative technology or process installed by the direct discharger has potential for industry-wide application and achieves either significantly greater pollutant reduction compared to that required by the applicable effluent limitations or achieves the required reduction at significantly lower cost. Subsection (a) is intended to provide the same kind of innovative technology deadline extension for indirect dischargers as is provided in section 301(k) of the Federal Water Pollution Control Act, as amended by section 19 of H.R. 8, for direct dischargers. In this way, the Committee intends to provide an additional incentive to the development of new and better techniques to control the discharge of pollutants.

The purpose of this amendment is to encourage the development of innovative processes and control technologies. It is not in any way intended to provide a means for delay in compliance with the deadlines established in the Act. The Committee thus understands "innovative system" to be one which has not yet been demonstrated on a commercial scale under operating conditions in any industry; is proposed for application in a very few plants; and is unlikely to be installed without this encouragement. Additionally, this provision is not intended to allow delays by other companies awaiting the results of the demonstration.

Subsection (b) of section 21 directs the Administrator to increase the number of employees in the Agency in order to effectively implement the Federal Water Pollution Control Act's pretreatment requirements.

The Committee believes that insufficient Agency resources have been dedicated to regulatory and implementation activities relating to the National Pretreatment Program. This program has been surrounded by controversy since 1972 and it is only now on the verge of being implemented nationwide.

The regulatory deadline for approval of required local pretreatment programs was July 1, 1983. At the present time, there are 1456 municipalities affected by the requirement to develop an approvable local pretreatment program. As of March 31, 1985, a total of 995 local programs has been approved, and the regions and states indicated that another 210 complete submissions were currently either under or awaiting review, reviewed and found approvable for public notice, or on public notice. Most of the remaining 251 municipalities have submitted one or more portions of their programs for review.

The Committee believes that EPA resources dedicated to pretreatment program approval and enforcement activities should be substantially increased. This is especially true with regard to the continuing effort which will be involved in assuring that the program is implemented effectively.

SECTION 22—CRIMINAL PENALTIES

This section amends section 309 of the Federal Water Pollution Control Act to provide penalties for dischargers or individuals who knowingly or negligently violate or cause the violation of certain of the Act's requirements.

Under section 22, punishment by fine of between $2,500 and $25,000 per day, or imprisonment for up to a year, or both, is required with respect to (1) any person who negligently violates section 301, 302, 306, 307, 308, 318, or 405 of the Federal Water Pollution Control Act, or any permit condition or limitation implementing any of these sections in an NPDES permit, or any requirement imposed in an approved pretreatment program, or any requirement in a dredge and fill permit under section 404 of the Act; or (2) any person who negligently introduces into a sewer system or a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage or which causes the treatment works to be in violation of its NPDES permit requirements. Second and subsequent violations shall be punished by a fine or not more than $50,000 per day, or by imprisonment of up to two years, or both.

Section 22 also requires punishment by fine of between $5,000 and $50,000 per day, or imprisonment for up to two years, or both, for (1) any person who knowingly violates section 301, 302, 306, 307, 308, 318, or 405 of the Act, or any permit condition or limitation implementing any of these sections in an NPDES permit, or any requirement imposed in an approved pretreatment program, or any requirement in a dredge and fill permit under section 404 of the Act; or (2) any person who knowingly introduces into a sewer system or a publicly owned treatment works any pollutant or hazardous substances which causes or may reasonably be anticipated to cause personal injury or property damage or which causes the treatment works to be in violation of its NPDES permit requirements. As with negligent violations, for subsequent knowing violations, the maximum punishment which may be imposed for these knowing violations is twice that pertaining to the initial violation.

The section provides, for both of these negligent or knowing violations, an affirmative defense that the introduction of any pollutant or hazardous substance into the sewer system or treatment works was in compliance with all applicable Federal, state and local requirements governing the introduction.

Any person knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under the Act shall upon conviction be punished by a fine of up to $10,000 or imprisonment for up to two years, or both. Second and subsequent convictions shall be punished by fine of up to $20,000 or by imprisonment of up to four years, or both.

For the purpose of section 22, the term "person" means any responsible corporate officer in addition to the definition of the term in section 502(5) of the Federal Water Pollution Control Act. The term "hazardous substance" means any substance designated pursuant to section 311 of the Federal Water Pollution Control Act; any element, compound, mixture, solution, or substance designated under section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act; any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act; and any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.

Presently the Federal Water Pollution Control Act has no provision that deals with knowing violations of major statutory or regulatory requirements. Section 22 is intended to be used primarily to address intentional violations of the Act occurring on a regular basis over an extended period of time that result in significant harm to public health or the environment. The section is intended to provide for imposition of severe penalties for such actions.

SECTION 23—CIVIL PENALTIES

Subsection (a) of this section increases the maximum amount of a civil penalty for violating certain provisions of the Act from $10,000 per day to $25,000 per day.

Subsection (b) provides that the Federal Water Pollution Control Act shall not be construed as requiring a state to have a civil penalty for violations described in section 309(d) which has the same monetary amount as the civil penalty established by this section. This relates to the requirement in the Act that a state have adequate enforcement and penalty provisions in order to assume management of the National Pollution Discharge Elimination System under section 402 of the Act.

SECTION 24—ADMINISTRATIVE PENALTIES

This section authorizes the assessment of administrative civil penalties for violations of the Act. Whenever on the basis of any information available to him the Administrator finds that any person is in violation of sections 301 (except with respect to a violation of section 404), 302, 306, 307, 318 or 405 of the Act or is in violation of any permit condition or limitation implementing any of these sections in a permit issued under section 402 of the Act, he may, after consultation with the state in which the violation occurs, assess a civil penalty of not more than $10,000 per day of violation, except that the penalty shall not exceed a total of $125,000. The Secretary of the Army is given similar authority in connection with permits issued under section 404 of the Act, which relates to the discharge of dredged or fill material.

A civil penalty is assessed under this provision by the Administrator or the Secretary, as the case may be, by an order made on the record after opportunity for a hearing. Before issuing such an order, the Administrator or the Secretary is required to give written notice to the person to be assessed the civil penalty of the proposal to issue such an order and is required to provide the person with an opportunity to request, within 15 days, a hearing on the order. Public notice and reasonable opportunity to comment must also be provided.

Any person who comments on a proposed assessment shall be given notice of any hearing held and any order assessing a penalty.

In any such hearing, the person shall have a reasonable opportunity to present evidence.

If no hearing is held before the issuance of an order assessing a penalty, any person who commented on the proposed assessment may petition the Administrator or Secretary to set aside the order and to provide a hearing on the penalty. The Administrator or Secretary must set aside the order and provide a hearing if the Administrator or Secretary determines that the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order. If the Administrator or Secretary denies a hearing, the Administrator or Secretary shall provide to the petitioner, and publish in the Federal Register, notice of the reasons for the denial.

The Administrator or the Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this provision.

Any person who requested a hearing with regard to the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of the order with the United States Court of Appeals for the District of Columbia Circuit or for any other Circuit in which such person resides or transacts business. Such a petition many only be filed within the 30-day period beginning on the date the order making the assessment was issued.

If any person fails to pay an assessment of his civil penalty, after the order making the assessment has become a final order, and where the person does not file a petition for judicial review of the order, or after the court has entered a final judgment in favor of the Secretary of the Administrator, the Attorney General shall recover the amount assessed in an action brought in any appropriate District Court of the United States.

The Administrator and the Secretary are given the authority to issue subpoenas in connection with hearings under this provision and may request the Attorney General to bring an action to enforce any subpoena.

Any violation with respect to which any civil penalty is imposed under this provision is not subject to a civil penalty under section 309(d) or section 311(b) of the Federal Water Pollution Control Act.

When a state has proceeded with an enforcement action relating to a violation with respect to which the Administrator or the Secretary is authorized to assess a civil penalty under this provision, the Administrator and the Secretary are not authorized to take any action under this subsection if the state demonstrates that the state-imposed penalty is appropriate.

No action by the Administrator under section 24 shall affect any person's obligation to comply with any section of the Act or with the terms and conditions of any permit issued pursuant to section 402 or 404 of the Act.

The citizen suits provision in section 505(b)(1) of the Federal Water Pollution Control Act is amended to provide that no action can be commenced by a citizen if the Administrator or state has commenced and is diligently pursuing the assessment of a civil penalty. The same prohibition applies in existing law to those instances where the Administrator or a state is diligently pursuing a civil or criminal action.

The Committee intends that, in determining the amount of a administrative civil penalty, the Administrator or Secretary must take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, economic savings (if any) resulting from the violation, and such other matters as justice may require. Among the specific issues which should be considered, in the case of violations of limits in NPDES permits and EPA pretreatment standards, is the statistical basis for the limits. To account for long-range effluent variability, EPA sets effluent limitation guidelines and pretreatment standards at levels which well-operated plants are statistically expected to exceed a certain small percentage of the time (usually one or five percent) over the long-term. Before assessing a penalty, EPA should review the violations in light of the statistical probability that some violations would occur even at well-operated plants.

The maximum administrative penalty that may be assessed in an administrative enforcement action under this provision is $125,000. If a series of closely related violations occurs due to a single operational upset which leads to simultaneous violations of several pollutant parameters over a period of several days, EPA may bring one enforcement action, subject to the $125,000 maximum. EPA may not seek to evade the $125,000 maximum by, for example, bringing separate enforcement actions for each of these simultaneous violations. However, EPA is free to bring separate actions for individual violations (or groups of violations) which are not of this nature.

SECTION 25—CLEAN LAKES

This section contains a number of amendments to section 314 of the Federal Water Pollution Control Act, which establishes a grant assistance program to improve the water quality of lakes.

Subsection (a) of section 25 deletes the reference to "fresh water" in section 314(a)(1) in order to make the Clean Lakes Program applicable to saline, as well as fresh water, lakes. The Committee believes that lakes which are saline, both inland and those connected to bays, estuaries or other saline waters where salinity from those sources enters the lake, should not be excluded from the water quality improvement program for lakes under section 314.

Subsection (b) adds a number of new subsections to section 314.

New subsection (d) provides that the Administrator shall make grants to states for priority projects for control of nonpoint sources of pollution which are contributing to the degradation of water quality in lakes. The amount granted to the state for such a project shall not exceed 70 percent of the cost of the project. There is authorized to be appropriated not to exceed $50 million per year for the Fiscal Years 1986 through 1990 for these purposes.

New subsection (e) directs the Administrator to submit annually to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works a report on the status and trend of water quality in lakes in the United States, including, but not limited to, the nature and extent of pollution loading from point and nonpoint sources and the extent to which the use of lakes is impaired as a result of such pollution, particularly with respect to toxic pollution.

Subsection (c) of section 25 consists of technical amendments to existing law to reflect the amendments made by section 25.

Subsection (d) of section 25 contains clean lakes projects.

Paragraph (1) of subsection (d) directs the Administrator to study, in cooperation with the State of Texas, water quality problems in Lake Houston, Texas, and undertake such control measures as determined necessary to improve water quality. The study will include, but not be limited to, evaluating the feasibility of regional or consolidated waste treatment facilities and developing recommendations for cost-effective control of pollutants entering the Lake Houston watershed. A report is to be submitted to the Committee on Public Works and Transportation and the Committee on Environment and Public Works of the Senate.

Lake Houston is a 12,000 acre lake located in the northeast section of Houston, Texas. The lake provides about 40 percent of the drinking water for the City of Houston. It is also used by thousands of residents of the Houston area for a wide range of recreational activities. At present, there is great concern that high fecal coliform counts indicate a potential serious health hazard. Given the key role played by Lake Houston in the area, the Committee believes priority action is warranted.

There has been extensive development in the vicinity of Lake Houston and a large number of very small treatment plants have been put in place in the watershed. Most of these treat less than 1 million gallons per day. Overloading, poor performance, or lack of proper operation and maintenance of these small plants may be significant factors in the water quality problems being experienced at Lake Houston. The Committee is directing that these and other factors be studied and measures taken to eliminate water quality problems. One approach for consideration is consolidating the smaller treatment plants into larger, more effective sewage treatment systems.

Paragraph (2) of subsection (d) directs the Administrator, in cooperation with the Secretary of the Army, and in consultation with state and local agencies, to conduct a one-year study of Beaver Lake, Arkansas, and then undertake a demonstration project at Beaver Lake to determine the effectiveness of measures identified in the study. The study is to find means to optimize achievement of the purposes for which Beaver Dam was constructed while preserving and enhancing the quality of the reservoir's water. Following the demonstration project, the Administrator is to submit a report along with recommendations for further measures to improve the water quality of Beaver Lake. This report is to be submitted to the Committee on Public Works and Transportation of the House and the Committee on Environment and Public Works of the Senate. To carry out this subsection, funds appropriated under subsections (c) and (d) of section 314 of the Federal Water Pollution Control Act are available.

Beaver Lake is on the White River in northwestern Arkansas, in the Ozark highlands. Beaver Dam, behind which the lake is impounded, was completed by the U.S. Army Corps of Engineers in 1965 and impounds nearly 2 million acre-feet of water. It is operated in conjunction with other lakes in the White River basin to prevent flood damage down river. It also serves as an important source of hydroelectric power and water supply. In addition, there are eleven parks around the lake, providing substantial recreational opportunity. A high level of water quality is needed to maintain the varied uses of Beaver Lake. The comprehensive, one-year study followed by a thorough demonstration project, will provide the opportunity for improvements in the water quality of the lake.

Paragraph (3) of subsection (d) directs the Administrator to undertake a demonstration project for the removal of silt, stumps and other obstructions from Greenwood Lake and Belcher Creek, New Jersey. Upon completion of the demonstration project, the Administrator is to submit a report, along with recommendations for further measures to improve the water quality of Greenwood Lake and Belcher Creek, to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works. There is authorized to be appropriated $10 million to carry out this project.

Paragraph (4) of subsection (d) directs the Administrator to undertake a demonstration project for the removal of silt and stumps from, and the control of pollution from nonpoint sources in, Deal Lake, Monmouth County, New Jersey. Upon completion of the demonstration project, the Administrator is to submit a report on the project, along with recommendations for further measures to improve the water quality of Deal Lake, to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works. There is authorized to be appropriated $8 million to carry out this project.

Paragraph (5) of subsection (d) directs the Administrator to undertake a demonstration project for the restoration of Alcyon Lake in New Jersey including removal and disposal of contaminated sediments in the Lake. Upon completion of the project, a report is to be submitted to the House Committee on Public Works and Transportation and the Senate Environment and Public Works Committee, together with recommendations for further cleanup measures. This is authorized to be appropriated $3,500,000 to carry out this project.

Paragraph (6) of subsection (d) directs the Administrator to undertake a demonstration project for the removal of silt and aquatic growth from Sauk Lake and its tributary streams in the vicinity of Sauk Center, Stearns County, Minnesota. Upon completion of the project, the Administrator is to submit a report to the Committee on Public Works and Transportation of the House and the Committee on Environment and Public Works of the Senate, along with recommendations of further measures to improve the water quality of Sauk Lake. There is authorized to be appropriated $2,000,000 to carry out this project. The Committee directs the Administrator to use dredged material from this project as cover on the Sauk Centre Landfill, to the maximum extent feasible.

Paragraph (7) of subsection (d) directs the Administrator to undertake a demonstration project to remove silt and aquatic growth from Lake Worth, Tarrant County, Texas, including the construction of silt traps and providing other devices or equipment to prevent and abate the further deposit of sediment in the lake. The project shall also provide for the use the dredged material in the reclamation of despoiled land. Upon completion of the project, the Administrator is to submit a report, along with recommendations of further measures to improve the quality of the lake, to the Committee on Public Works and Transportation of the House and the Committee on Evnironment and Public Works of the Senate. There is authorized to be appropriated $1,750,000 to carry out this project.

SECTION 26—NPDES PERMITS

Section 402(b)(1)(B) of the Federal Water Pollution Control Act currently provides that permits for the discharge of pollutants are to be for fixed terms not exceeding five year.

The burden placed upon the Agency and the states by virtue of the numerous permits that must be issued or renewed each year has, among other things, led to extended delays in the permitting process. In order to help relieve these burdens and to expedite the process for the Agency, states, and permittees alike, section 26(a) authorizes the issuance of certain permits for terms of up to ten years.

For a permit to be granted for a term not to exceed ten years, the state must determine, in accordance with guidelines established by the Administrator, or the Administrator must determine (depending on whether the permit program is administered by the state or EPA), that the applicant has consistently complied with any permit issued under section 402 of the Act, and that toxic and non-conventional pollutants are not detectable in the effluent or that these pollutants are present only in trace amounts and are neither causing nor are likely to cause toxic effects, alone or in combination with pollutants from other sources.

For a permit issued for a term in excess of five years, the permit must be modified promptly to insure compliance with any new or revised effluent limitation under section 307(a) of the Act (toxics) or any new or revised requirement pursuant to a standard under section 303 of the Act (water quality standards) when the effluent limitation is more stringent than the existing limitation or controls a pollutant not controlled in the permit.

The Agency and the states are issuing most permits for a second time. Since initial permit issuance, a great deal of familiarity and experience has been gained both with the permitting process and with specific permits and permittees. In many cases, this justifies an extended permit term. Accordingly, the Committee has included a provision providing that permits may be for a term not exceeding ten years, but only in those cases where toxic or non-conventional pollutants are not a factor.

In addition, nothing in this provision infringes on the Agency's ability to establish shorter permit terms where the Agency deems it appropriate. Given the wide variety of permits and recognizing that the Agency is just beginning to issue many major permits with toxic limitations for the first time, it is understood that EPA will need the flexibility to set maximum permit terms of less than ten years for some dischargers.

Subsection (b) of section 26 of the bill provides that the Administrator shall not require a permit under section 402 or directly or indirectly require any state to require such a permit for discharges of stormwater run-off which (1) are from mining operations or oil gas exploration, production, processing, or treatment operations, (2) are composed entirely of flows from conveyances or systems of conveyances used for collecting and conveying precipitation run-off; and (3) are not contaminated with process wastes, overburden, raw materials, toxic pollutants above background levels, spilled product, oil grease, or hazardus substances.

Any person discharging stormwater run-off described in the preceding sentence shall monitor the quality of water in such flows and shall report not less often than annually to the Administrator on the results of such monitoring.

The subsection was developed by the Committee in recognition of the fact that there are numerous situations in the mining and oil and gas industries where stormwater is channeled around plants and operations through a series of ditches and similar devices in order to prevent pollution contamination of the stormwater. Many of these stormwater run-off devices are voluntary means of pollution control. For example, many mining operations located in mountainous and snow-packed areas collect run-off around the mine sites to keep such water from coming into contact with and being contaminated by process water or materials. The Committee believes that, to avoid penalizing operators for using good management practices designed to prevent or minimize pollution and for making expenditures to prevent stormwater run-off contamination, uncontaminated stormwater diversion devices should not be regulated under the permit scheme of the Act.

Subsection (c) amends section 402 of the Federal Water Pollution Control Act by adding a new subsection (m). New subsection (m) provides that, in issuing a permit to a publicly owned treatment works, the Administrator shall not require additional pretreatment by any indirect discharger of conventional pollutants introduced into the treatment works as a substitute for inadequate pollution removal by the treatment works due to design or operation problems for which the treatment works is responsible. Indirect dischargers into the works must still comply with all applicable pretreatment standards promulgated under the Federal Water Pollution Control Act. Nothing in this subsection affects the Administrator's authority under sections 307 and 309 of the Act, affects state and local authority under section 307(b)(1) (pretreatment programs) or section 510 (state authority to establish limitations on discharges of pollutants), relieves the treatment works from its obligations to meet requirements of the Act, or otherwise precludes the treatment works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit.

When a publicly owned treatment works is failing to meet its permit limits due in whole or in part to a failure by the treatment works in its responsibilities, the Administrator shall not require pretreatment of conventional pollutants by indirect discharges to remedy that problem. This provision simply recognizes that in such circumstances the burden of correcting the problem lies with the publicly owned treatment works itself through adjustment of its facilities or operation. The language of this provision makes clear, however, that discharges of conventional wastes must be in compliance with all applicable pretreatment limitations and prohibitions. In addition, this subsection is not designed to interfere with EPA's enforcement authorities, state and local pretreatment authorities, or a municipality's responsibilities and options to treat or require pretreatment in order to comply with its permit requirements.

Subsection (d) amends section 402 of the Federal Water Pollution Control Act by adding new subsection (n). New subsection (n) allows partial delegation to the states of the Act's NPDES program. Under this provision, the Governor of a state may submit and the Administrator may approve a partial permit program for point source discharges into the navigable waters of the state where the state's partial permit program covers, at a minimum, either administration of a major category of the discharges into the state's navigable waters or a major component of the state's NPDES permit program. With respect to a partial permit program covering administration of a major category of discharges, the Administrator is authorized to approve such a program if the program covers in a complete fashion all of the discharges under the jurisdiction of a department or agency of the state and if the Administrator determines that the partial program represents a significant and identifiable part of the state's NPDES program. Under partial delegation and assumption, states with point source jurisdiction split among two or more state agencies could apply for all of the point sources under the jurisdiction of a single state agency. Upon approval, the state agency could assume full administration of all point sources within that agency's jurisdiction and responsibility. Such state agency could assume and administer its part of the total NPDES program regardless of whether other state agencies with jurisdiction over other parts of the total program assumed administration of their respective parts.

With respect to a partial and phased permit program covering a major component of the state's NPDES program, the Administrator is authorized to approve such a program if the Administrator determines that the partial program represents a significant and identifiable part of the state's NPDES program such as all major industrial dischargers or all major municipal dischargers, and if the state submits and the Administrator approves a plan for the state to assume administration by phases of the remainder of the state's NPDES program within five years. Under partial and phased assumption, the state would be required to assume all of the program within the specified period of time, but it could do so by assuming some significant part of the program each year up to the end of the specified period. This type of assumption should be helpful to states needing time to acquire resources and to properly forecast the resourses needed to assume the rest of the program.

The Committee believes that authorizing partial and phased approval of state permit program will greatly benefit efforts to increase individual states' NPDES program implementation activities. With phased approval, states will be able to gradually assume responsibility for portions of the NPDES program over a specified period of time leading to full administration of the program by the end of the specified period. This will be particularly helpful to states having resource or other constraints which currently preclude full administration but allow something less than that at this time. Other states will benefit from the provision's authorization for a state to assume permitting authority over one or more discharge categories representing a major part of the state's permit program. For example, states with jurisdiction over point source regulation split among two or more state agencies, could apply for and receive authority to implement the permit program for all categories of discharges under the jurisdiction of one or more of its agencies.

It is the Committee's understanding and intent that, under the language of new subsection 402(n), at least the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas could qualify for partial NPDES program delegation.

Subsection (e) of section 26 of H.R. 8 amends section 402(c) of the Federal Water Pollution Control Act to provide that at state may return or the Administrator may withdraw approval of delegated NPDES program responsibilities. In the case of an approved partial permit program covering administration of a major category of a state's point source discharges, the entire permit program related to that category and being administered by one of the state's departments or agencies must be returned or withdrawn.

Partial programs relating to other categories and being administerd by other of the state's departments or agencies, if such is the case, may remain delegated. In the case of an approved partial and phased program covering administration of a major component of a state's NPDES program, any approved phased component must be returned or withdrawn.

SECTION 27—AUDITS

This section provides that for the purpose of carrying out audits and examinations with respect to recipients of Federal assistance under the Act, the Administrator is authorized to enter into noncompetitive procurement contracts with state audit organizations. These contracts may only be entered into to the extent and in such amounts as may be provided in advance in appropriations Acts.

Section 501(d) of the Act provides that the Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the recipients that are pertinent to the grants received under the Act. The purpose of the amendment is to clarify EPA's authority to negotiate contracts with state audit organizations rather than seeking competitive bids.

SECTION 28—COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

This section amends the definition of "State" in section 502 and "United States" in section 311 to include the Commonwealth of the Northern Mariana Islands. Since the Act was last reauthorized in 1977, a portion of the Trust Territory of the Pacific Islands has been redesignated as the Commonwealth of the Northern Mariana Islands. Amending the definitions of the terms "State" and "United States" to include the Northern Marianas reflects the new status of the Commonwealth.

SECTION 29—AGRICULTURAL STORMWATER DISCHARGES

This section amends section 502(14) of the Federal Water Pollution Control Act to provide that the term "point source" of pollution does not include agricultural stormwater discharges.

SECTION 30—REPORTS TO CONGRESS

The section directs the Administrator to study and report to Congress on the effect of dams on water quality and the status and performance of state revolving loan funds.

The Administrator, in cooperation with interested states and Federal agencies, is directed to study and monitor the effects on the quality of navigable waters attributable to the impoundment and discharge of water by dams. The results of this study, together with recommendations for the control of such impoundment and discharges, shall be submitted to Congress not later than December 31, 1986.

The Administrator is also directed to submit to Congress not later than February 10, 1990, a report on the financial status and operations of Water Pollution Control Revolving Funds established by the States under section 16 of H.R. 8. The Administrator shall prepare such report in cooperation with the States, including water pollution control agencies and other water pollution control planning and financing agencies.

The report under this subsection is to also include an inventory of the facilities that are in significant noncompliance with the enforceable requirements of the Act, an estimate of the cost of construction for any such facilities that require construction to comply with such requirements, an assessment of the availability of sources of funds for financing such needed construction, including an estimate of the amount of funds available for loans through September 30, 1999, from the Water Pollution Control Revolving Funds established by the States, an assessment of the operations, loan portfolio, and loan conditions of such Funds, an assessment of the effect on user charges of the assistance provided by such Funds compared to the assistance provided with funds appropriated pursuant to section 207 of the Act and an assessment of the efficiency of the operation and maintenance of treatment works constructed with assistance provided by such Funds compared to treatment works constructed with assistance provided under the construction grants program.

SECTION 31—NEWTOWN CREEK, NEW YORK

This section authorizes the Administrator to make a grant to the City of New York to install such additional facilities in, and make such modifications to, the Newton Creek sewage treatment plant as are necessary for the plant to provide secondary treatment. The Federal share of the project is 75 percent of the cost of installing such facilities and making such modifications. There is authorized to be to appropriated such sums as may be necessary to carry out this section for fiscal year beginning after September 30, 1985, which shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.

SECTION 32—SAN DIEGO, CALIFORNIA

Subsection (a) of section 32 states that the purpose of the section is to protect to the economy, public health, environment, surface water, public beaches, and water quality of the city of San Diego, California, and surrounding areas, which are endangered and are being polluted by raw sewage emanating from the city of Tijuana, Mexico.

Subsection (b) provides that, upon approval of the necessary plans and specifications, the Administrator is authorized to make grants to the Secretary of the Army, acting through the Chief of Engineers or any other Federal agency or any other appropriate commission or entity designated by the President. Such grants shall be for construction of a project consisting of treatment works in the city of San Diego, California, to provide primary or more advanced treatment of municipal sewage and industrial waste from the city of Tijuana, Mexico, and a publicly owned treatment works in the city to provide primary or more advanced treatment of municipal sewage and industrial waste for the city of San Diego as may be necessary to meet the objectives of the Federal Water Pollution Control Act.

Subsection (c) provides that as an interim measure, the Administrator shall make grants to the Secretary or such other agency, commission, or entity as may be designated under subsection (b) for the construction of defensive treatment works to protect residents of the city of San Diego and surrounding areas from pollution resulting from any inadequacies or breakdowns in wastewater treatment works and systems in Mexico. The Secretary or such agency, commission, or entity is authorized to construct, operate, and maintain such defensive treatment works in order to accomplish the purposes of this section.

Subsection (d) provides that any treatment works for which a grant is made shall be constructed in accordance with plans developed by the Secretary or such agency, commission, or entity, in consultation with the city of San Diego, and approved by the Administrator to meet the construction standards which would be applicable if such treatment works being constructed under section 201 of the Federal Water Pollution Control Act.

Subsection (e) provides that the project authorized by this section is to provide capacity to provide treatment of municipal sewage and industrial waste for the cities of Tijuana and San Diego.

Subsection (f) provides that all provisiions of the Federal Water Pollution Control Act which are applicable to a grant made to a state, municipality, or intermunicipal or interestate agency under section 201(g) of the Act shall apply to a grant made to an agency, commission, or entity for construction of treatment works under subsection (b)(2) of section 32, except that the non-Federal share of the costs of such construction shall be paid by the city of San Diego and other non-Federal interests.

Subsection (g) provides that construction of the treatment works with respect to municipal sewage and industrial waste from the city of Tijuana shall be at full Federal expense less any costs paid by the Government of Mexico as a result of agreements negotiated with the United States.

Subsection (h) provides that upon application of the city of San Diego, the Administrator may issue a permit under section 402 of the Federal Water Pollution Control Act which modifies the requirements of section 301(b)(1)(B) of such Act to permit the discharge of pollutants for any ocean outfall constructed with Federal assistance under this Act if such pollutants have received primary or more advanced treatment. Any permit issued pursuant to this subsection shall not be effective after December 31, 1993.

Subsection (i) provides that if the treatment works constructed under this section to provide treatment for municipal sewage and industrial waste from the city of Tijuana has capacity which is not longer necessary to provide such treatment, such capacity may be used to provide treatment for municipal sewage and industrial waste for the city of San Diego.

There is authorized to be appropriated for fiscal years beginning after September 30, 1985, such sums as may be necessary to the Administrator to make grants under this section and such sums as may be necessary to the Secretary, or such other agency, commission, or entity as the President may designate under subsection (b), to carry out this section.

The City of Tijuana, located at the border of California and Baja California Norte, Mexico, presently generates approximately 20 million gallons of sewage per day. In the future, as the City's rapidly expanding population continues to grow beyond the current one million inhabitant level, and as running water is provided to more the City's homes, the amount of sewage emanating from the City will also greatly increase.

Tijuana has neither a reliable sewage collection system nor a fully operating wastewater treatment facility. Consequently, discharges of untreated and partially treated sewage from Tijuana to the ocean at Playas de Tijuana, in addition to sewage seepages across the border, have continually contributed to the contaminination of U.S. beaches and territory in the Tijuana River Valley region. This contaminination has not only had an adverse economic impact on the U.S. communities in the region, it also poses a severe health hazard to citizens on both sides of the border. In August of 1983, for example, more than 6 million gallons per day of Tijuana sewage were flowing into the ocean near Imperial Beach, California. This forced the closure of Imperial, Silver Strand, and Coronado Beaches where water samples indicated the contamininantion to be as high as 100 times the level considered safe. Unfortunately, this was not an isolated incident. Beaches north of the border were quarantined for 307 days is 1980, 219 days in 1982, and 309 days in 1983 because of pollution emanating from Tijuana.

Section 32 provides authorization for the construction of wastewater treatment works to provide for the long and short term sewage treatment needs of both the City of Tijuana, Mexico, and the City of San Diego.

With regard to treatment works authorized for sewage and industrial waste for the City of Tijuana, Mexico, it is fully expected that the Administrator will expeditiously process any application by the City of San Diego for a permit, under section 402 of the Clean Water Act, to modify requirements for secondary treatment in order to discharge through an ocean outfall.

The Committee is aware of the recent commitment of funds by the Government of Mexico, as formalized in the Inter-American Development Bank loan, for the purpose of constructing a permanent treatment facility to handle Tijuana sewage. The Committee commends the efforts of the Mexican Government and is confident of the willingness and ability of Mexico to construct and maintain such facilities.

This bill authorizes construction of a supplemental conveyance system. This system will serve as an integral part of Mexico's permanent facilities and ensure protection of the San Diego border area.

It is the belief of the Committee that a treatment plant on the U.S. side of the border to treat Tijuana sewage will not be necessary; however, such facility shall be constructed if the Administrator, in consultation with the appropriate federal, state and local entities, determines that the Mexican facilities do not sufficiently resolve the problem.

SECTION 33—NACO, ARIZONA

This section provides that, for purposes of protecting the economy, public health, environment, and surface and ground water of the community of Naco, Arizona, which are in danger and are being polluted by raw sewage emanating from the community of Naco, Sonora, Mexico, upon application of the County of Cochise, Arizona, the Administrator of the Environmental Protection Agency shall make grants to such County for construction of a project consisting of a publicly owned treatment works to provide primary or more advanced treatment of not less than 150,000 gallons of untreated sewage emanating from the City of Naco, Sonora, Mexico, and treatment of waste from Naco, Arizona.

Any treatment works for which a grant is made under this section shall be constructed in accordance with plans developed by the County of Cochise, Arizona and approved by the Administrator to meet the construction standards which would be applicable if such treatment works were being constructed under section 201 of the Federal Water Pollution Control Act.

The project authorized by this section shall provide capacity to provide treatment of municipal sewage and industrial water for the City of Naco, Sonora, Mexico and the community of Naco, Arizona.

All provisions of the Federal Water Pollution Control Act which are applicable to grants made under section 201(g) of such Act shall apply to grants made under this section to provide treatment of municipal sewage and industrial waste for the community of Naco, Arizona.

The Federal share of the cost of construction of the treatment works to provide treatment of municipal sewage and industrial waste for the City of Naco, Sonora, Mexico shall be at full Federal expense less any costs paid by the Government of Mexico as a result of agreements negotiated with the United States.

If the treatment works constructed under this section to provide treatment for municipal sewage and industrial waste for the City of Naco, Sonora, Mexico, has capacity which is no longer necessary to provide such treatment, such capacity may be used to provide treatment for municipal sewage and industrial waste for the community of Naco, Arizona.

For purposes of this section, the terms "construction" and "treatment works" have the meanings such terms have under section 212 of the Federal Water Pollution Control Act.

There is authorized to be appropriated to the administrator $2,000,000 to make grants under this section for fiscal years beginning after September 30, 1985.

Since early 1977, the United States has negotiated with Mexico regarding immediate and long-term solutions to the problems of chronic sewage discharges into Greenbush Draw from the Naco, Sonora treatment facilities. The City of Bisbee and County of Cochise have supplied equipment and manpower for repairs on many occasions, with funding from the International Boundary and Water Commission. However, because of frequent damage from heavy rains, inadequate maintenance of facilities, increased sewage load, and the strained economic conditions in Naco, Sonora, the frequency of sewage overflow from the treatment ponds and manholes in Naco, Sonora has increased in the last three years.

The groundwater production facilities for Bisbee, Arizona which are owned and operated by Arizona Water Company, are located in Greenbush Draw, approximately one mile downstream from the international boundary. The sewage discharge from Naco, Sonora threatens to contaminate the aquifer which supplies all of the City of Bisbee's drinking water. The sewage load at Naco, Sonora is currently 132,000 gallons per day; this load was flowing unchecked into Greenbush Draw in December 1983. As an emergency measure to prevent this sewage from reaching the Arizona Water Company well field, a diversion and impoundment were constructed on private property in Naco, Arizona again using funding from the International Boundary and Water Commission. This holding pond is unacceptable as a long-term measure and is not adequate to retain sewage flows in the event of heavy seasonal rains which are typical of southern Arizona nor to eliminate the threat of groundwater contamination.

SECTION 34—LIMITATION ON DISCHARGE OF RAW SEWAGE BY NEW YORK CITY

This section places limitations on the discharge of raw sewage by the City of New York.

Subsection (a) provides that if the wastewater treatment plant identified in the consent decress entered into by New York City and EPA as the North River plant has not achieved advanced preliminary treatment as required under the terms of the consent decree by August 1, 1986, the city of New York shall not discharge raw sewage from the drainage area of such plant (as defined in the consent decree) into navigable waters after such date in an amount which is greater for any 30-day period than an amount equal to 30 times the average daily amount of raw sewage discharged from drainage area during the 12-month ending on the earlier of the date on which such plant becomes operational or March 15, 1986, (as determined by the Administrator), except as provided in subsection (b)

It also provides that if the wastewater treatment plant identified in the consent decree as the Red Hook plant has not achieved advanced preliminary treatment as required under the terms of the consent decree by August 1, 1987, the City of New York shall not discharge raw sewage from the drainage area of such plant (as defined in the consent decree) into navigable waters after such date in an amount which is greater for any 30-day period than an amount equal to 30 times the average daily amount of raw sewage discharged from such drainage area during the 12-month period ending on the earlier of the date on which such plant becomes operational or March 15, 1987, (as determined by the Administrator), except as provided in subsection (b).

Subsection (b) provides for waivers of the requirements of subsection (a). In the event of any significant interruption in the operation of the North River plant or the Red Hook plant caused by an event described in subparagrah (A), (B), or (C) of paragraph (5) occurring after the applicable deadline established under subsection (a), the Administrator shall waive the limitation of subsection (a) with respect to such plant, but only to such extent and for such limited period of time as may be reasonably necessary for the City of New York to resume operation of such plant.

In the event that the volume of precipitation occurring after the applicable deadline established under subsection (a) causes the discharge of raw sewage to exceed the limitation under subsection (a), the Administrator shall waive the limitation of subsection (a) with respect to either or both such plants, but only to such extent and for such limited period of time as the Administrator determines to be necessary to take into account the increased discharge caused by such volume of precipitation.

In the event that an increase in discharges from the North river drainage area constituting a violation of the discharge limitations is due to a random or seasonal variation, and that any sewer hookup occurring, or permit for a sewer hookup granted, after July 31, 1986, is not responsible for such violation, the Administrator shall waive the limitation, but only to such extent and for such limited period of time as the Administrator determines to be reasonably necessary to take into account such random or seasonal variation.

In the event that an increase in discharge from Red Hook area constituting a violaton of the discharge limitations is due to a random or seasonal variation, and that any sewer hookup occurring, or permit for a sewer hookup granted, after July 31, 1987, is not responsible for such violation, the Administrator shall waive the limitation of subsection (a)(2), but only to such extent and for such limited period of time as the Administrator determines to be reasonable necessary to take into account such random or seasonal variation. The Administrator shall extend the deadlines in subsection (a) to such extent and for such limited period of time as may be reasonably required to take into account any act of war, unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which would not have been prevented or avoided by the exercise of due care or foresight, or other circumstances shall not include the unavailability of Federal funds under section 201 of the Federal Water Pollution Control Act, the unavailability of funds from the City of New York or the State of New York, or a policy decision made by the City of New York or the State of New York to delay the achievement of advanced preliminary treatement at the North River plant or Red Hook plant beyond the applicable deadline set forth in subsection (a).

Subsection (c) provides that any violation of subsection (a) shall be considered to be a violation of section 301 of the Federal Water Pollution Control Act, and all provisions of such Act relating to violations of such section 301 shall apply.

Subsection (d) provides that, for purposes of this section, the term "consent decree" means the consent decree entered into by the Environment Protection Agency, the City of New York, and the State of New York, on December 30, 1982, relating to construction and operation of the North River and Red Hook wastewater treatment plants.

Subsection (e) directs the Administrator to work with the City of New York to eliminate the discharge of raw sewage by such city at the earliest practicable date.

Subsection (f) provides that nothing in this section shall be construed as modifying the terms of the consent decree.

Subsection (g) states that it is the sense of Congress that the Administrator should not agree to any further modification of the consent decree with respect to the schedule for achieving advanced preliminary treatment.

Subsection (h) establishes termination dates. The provisions of this section shall remain in effect with respect to the North River drainage area until such time as the North River plant has achieved advanced preliminary treatment (as defined in the consent decree) for a period of six consecutive months.

The provisions of this section shall remain in effect with respect to the Red Hook drainage area until such time as the Red Hook plant has achieved advanced preliminary treatment (as defined in the consent decree) for a period of six consecutive months.

Subsection (i) directs the Administrator to establish and carry out a program within available funds to implement the monitoring activities which may be required under subsection (a).

Subsection (j) directs the Administrator to establish the methodologies, data base, and any other information required for making determinations for the North River drainage area by July 1, 1986, and for the Red Hook drainage area by July 31, 1987, unless the termination provisions of subsection (h) have been satisfied.

Subsection (k) provides that if the Administrator finds that a violation of subsection (a) has occurred, the Administrator shall also determine, within 30 days after such finding, whether a waiver provision of subsection (b) applies. If the Administrator requires information from the City of New York in order to determine whether a provision of subsection (b) applies, the Administrator shall request such information. If the City of New York does not supply the information requested by the Administrator, the Administrator shall determine that subsection (b) does not apply. The City of New York shall be responsible only for such expenses as are necessary to provide such requested information. Enforcement action pursuant to subsection (c) shall be commenced at the end of such 30 days unless a provision of subsection (b) applies.

This section in no way modifies the obligation of the City of New York to achieve secondary treatment as required by the Federal Water Pollution Control Act and any consent decrees entered into by the Environmental Protection Agency, the State of New York, the City of New York, and other parties, or any compliance orders or schedules imposed by the Administrator. It does not permit the indefinite discharge of raw sewage at the March 15, 1986 level. Rather, it places a limitation on the amount of discharge of raw sewage which may occur as the City continues its efforts to achieve full secondary treatment of all of its sewage.

SECTION 35—DEER ISLAND TREATMENT PLANT, MASSACHUSETTS

This section authorizes and directs the Administrator of the Environmental Protection Agency to make grants to the Metropolitan District Commission, Massachusetts, for a project to undertake emergency improvements at the Deer Island Waste Water Treatment Plant in Boston, Massachusetts. The Federal share of the project shall not exceed 75 percent of the cost of carrying out the improvements. There is authorized to be appropriated to carry out this section $10,000,000 per fiscal year for each of the fiscal years 1986, 1987 and 1988.

SECTION 36—OAKWOOD BEACH AND RED HOOK PROJECTS, NEW YORK

This section provides that, notwithstanding any provision of the Federal Water Pollution Control Act, the Administrator of the Environmental Protection Agency shall pay, to the extent provided in appropriation Acts, in the same proportion as the Federal share of other project costs, all expenses for the relocation of facilities for the distribution of natural gas with respect to the entire wastewater treatment works known as the Oakwood Beach (EPA Grant Number 360932) and Red Hook (EPA Grant Number 360394) projects, New York. There is authorized to be appropriated for fiscal years beginning after September 30, 1985, not to exceed $9,000,000 to carry out the section.

SECTION 37—CHIPPEWA TOWNSHIP, PENNSYLVANIA

This section provides that, in order to protect the public health, environment, and water quality endangered by the destruction of the Chippewa Township, Pennsylvania, sewage treatment facility and the resultant raw sewage discharge into Brady's Run, Pennsylvania, the Administrator of the Environmental Protection Agency is directed to remove the raw sewage.

The explosion that destroyed the Chippewa sewage treatment facility led to the discharge of millions of gallons of raw sewage into Brady's Run and the one mile section of the Beaver River, from where it enters the Ohio River upstream to Brady's Run.

Section 37 requires the Administrator to remove the sewage deposited in this reach of the Beaver River and Brady's Run.

SECTION 38—DES MOINES, IOWA

This section authorizes the Administrator of the Environmental Protection Agency to make a grant to the City of Des Moines, Iowa, for construction of the Central Sewage Treatment Plant component of the Des Moines, Iowa, metropolitan area project. The Federal share of such project shall be 75 percent of the cost of construction. There is authorized to be appropriated to carry out this section not to exceed $85,000,000 for fiscal years beginning after September 30, 1985, which shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.

SECTION 39—WASTEWATER RECLAMATION DEMONSTRATION

This section authorizes the Administrator of the Environmental Protection Agency to make a grant to the San Diego Water Reclamation Agency, California, to demonstrate and field test for public use innovative processes which advance the technology of wastewater reclamation and which promote the use of reclaimed wastewater. There is authorized to be appropriated not to exceed $3,000,000 to carry out this section for fiscal years beginning after September 30, 1985.

SECTION 40—BOSTON HARBOR AND ADJACENT WATERS

This section directs the Administrator to make grants to the Massachusetts Water Resource Authority for purposes of assessing the principal factors having an adverse effect on the environmental quality of Boston Harbor and its adjacent waters, developing and implementing a management program to improve the water quality of such Harbor and waters, and constructing necessary wastewater treatment works for providing secondary treatment for the areas served by such authority.

The Federal share of these projects shall not exceed 75 percent of the cost of construction thereof.

There is authorized to be appropriated $20,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990. Such sums shall be in addition to and not in lieu of any other amounts authorized to be appropriated under Title II of the Federal Water Pollution Control Act.

SECTION 41—TREATMENT WORKS IN WASHINGTON STATE

This section authorizes the Administrator to make grants to the sewage treatment authorities discharging into Puget Sound and adjacent marine waters, including the Strait of Juan de Fuca and Bellingham Bay, to construct necessary treatment works for providing secondary treatment for the areas served by such authorities. The Federal share of such projects shall not exceed 75 percent of the cost of construction thereof.

There is authorized to be appropriated $250,000,000 to carry out this section for fiscal year beginning after September 30, 1985, which shall be in addition to and not in lieu of any other amounts authorized to be appropriated under Title II of the Federal Water Pollution Control Act.

SECTION 42—IMPROVEMENT PROJECTS

Subsection (a) of Section 42 provides that the Administrator shall make a grant of $3,000,000 from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of California for fiscal year 1986 to the city of Avalon, California, for improvements to the publicly owned treatment works of such city.

Subsection (b) provides that the Administrator shall make grants from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of Pennsylvania for fiscal year 1986—

(1) to Walker Township, Pennsylvania, for developing a collector system and connecting its wastewater treatment system into the Huntingdon Borough, Pennsylvania, sewage treatment plant, and

(2) to Smithfield Township, Pennsylvania, for rehabilitating and extending its collector system.

Subsection (c) provides that notwithstanding section 201(g)(1) of the Federal Water Pollution Control Act or any other provision of law, the Administrator shall make a grant of $250,000 from funds allotted under section 205 of such Act to the State of Kentucky for fiscal year 1986 to the city of Taylor Mill, Kentucky, for the repair and reconstruction, as necessary, of the publicly owned treatment works of such city.

Subsection (d) provides that the Administrator shall make a grant of $27,000,000 from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of California for fiscal years beginning after September 30, 1985, to the city of Watsonville, California, for improvements to the wastewater treatment and disposal facilities of such city.

SECTION 43—STUDY OF REGULATION OF DE MINIMUS DISCHARGES

This section directs the Administrator to study the feasibility and desirability of eliminating the regulation of discharges of pollutants into the navigable waters in amounts which, in terms of volume, concentration, and type of pollutant, are not significant. A report, with recommendations, is to be submitted to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works within one year of the date of enactment of H.R. 8.

SECTION 44—STUDY OF EFFECTIVENESS OF INNOVATIVE AND ALTERNATIVE PROCESSES AND TECHNIQUES

This section directs the Administrator of the Environmental Protection Agency to study the effectiveness on waste treatment of innovative and alternative wastewater treatment processes and techniques which have been utilized in treatment works constructed under the Act. In conducting the study, the Administrator is to compile information, by state, on the types of such processes and techniques utilized and on the number of facilities constructed with such processes and techniques, and a description of such processes and techniques which have not performed to design standards. The Administrator must also determine which states have not obligated the full amount set aside for innovative and alternative facilities constructed with such processes and techniques and the reasons therefor. The Administrator is to submit a report on this study to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works not later than two years after the date of enactment, along with recommendations for providing more effective incentives for innovative and alternative wastewater treatment processes and techniques.

SECTION 45—WATER QUALITY IMPROVEMENT STUDY

Subsection (a) of this section directs the Administrator to study the water quality improvements which have been achieved by application of best available technology. The study must include an analysis of the effectiveness of, and the costs and benefits associated with, application of best available technology and must also include an analysis of methods of improving the Nation's water quality program and its effectiveness. Subsection (a) requires the Administrator, in analyzing methods of improving the water quality program, to study site-specific levels of treatment which will achieve the water quality goals of the Federal Water Pollution Control Act in a cost effective manner.

Subsection (b) requires the Administrator, within two years of the date of enactment of H.R. 8, to submit a report on the results of the study, together with recommendations for improving the Nation's water quality programs and its effectiveness, to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works.

SECTION 46—STUDY OF TESTING PROCEDURES

This section directs the Administrator to study the testing procedures for analysis of pollutants. The study shall include, but is not limited to, an analysis of the adequacy and standardization of testing procedures. In conducting the analysis of the standardization of such procedures, the Administrator is to consider the extent to which these procedures are consistent with comparable procedures established under other Federal laws. A report on the results of this study is to be submitted within one year, together with recommendations for modifying testing procedures, to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works.

The Administrator is also directed, biennially after the date of submission of the report on testing procedures, to conduct a state-of-the-art review of the testing procedures for the analysis of pollutants for the purpose of determining the adequacy and effectiveness of such procedures and, based on the results of such review, to submit to the Committees recommendations for modifying testing procedures to improve their effectiveness.

SECTION 47—STUDY OF PRETREATMENT OF TOXIC POLLUTANTS

This section directs the Administrator of the Environmental Protection Agency to conduct a study and make a report with recommendations concerning a number of pretreatment-related issues.

Subsection (a) directs the Administrator to study the adequacy of data on environmental impacts of toxic industrial pollutants discharged through publicly owned treatment works; the extent that secondary treatment by these treatment works removes toxic pollutants; the capability of publicly owned treatment works to grant pretreatment removal credits authorized under section 307(b)(1) of the Federal Water Pollution Control Act; possible alternative regulatory strategies for protecting the operations of publicly owned treatment works from industrial discharges, including an evaluation of how effective each strategy might be in achieving the goals of the Water Pollution Control Act and the Federal Water Pollution Control Act, and the adequacy under each of the strategies studied of Federal, state and local resources to establish, implement, and enforce multiple pretreatment limits for toxic pollutants.

Subsection (b) requires the Administrator to submit a report on the study performed under subsection (a), along with recommendations for improving the effectiveness of pretreatment requirements, to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works within two years of date of enactment of H.R. 8.

Section 47 requires the Administrator to study the effectiveness of the National Pretreatment Program. This study is not intended to determine the need for pretreatment or in any way to delay ongoing program implementation. Rather, the study should be used to update and expand information available to the Agency on such matters as the impact on publicly owned treatment works of industrial discharges and the pollution removal effectiveness of publicly owned treatment works technology. In addition, the study should also be used to evaluate the effectiveness—both in terms of pollution removal and cost—of industrial pretreatment controls.

Section 47(a)(3) requires the Administrator to study the capability of publicly owned treatment works to revise pretreatment requirements under section 307(b)(1) of the Federal Water Pollution Control Act. The Committee intends that EPA focus particular attention on the extent to which EPA's pretreatment removal credits program is presently effectuating the Congressional intent behind section 307(b)(1). Congress added the credits system to the Act in 1977 because of its concern that EPA's categorical pretreatment standards could result in costly redundant treatment by industry and publicly owned treatment works. The Committee also intends that, in implementing section 47(a)(3), the Administrator shall examine the capability of publicly owned treatment works to establish and enforce requirements more stringent than or different from national categorical standards.

The Committee's reference in section 43(a)(4) to possible alternative regulatory strategies is meant to include, among other things, consideration of sludge quality in evaluating strategy effectiveness. Section 43(a)(5)'s reference to adequacy of . . . resources is meant to include evaluation of technical expertise and availability of analytical methods as well as financial and staffing level evaluations.

SECTION 48—SULFIDE CORROSION STUDY

This section provides that, in order to protect the Federal and other investment in treatment works, the Administrator shall conduct a study of the problem of the corrosive effects of sulfides in collection and treatment systems, the extent to which the uniform imposition of categorical pretreatment standards will exacerbate this problem, and the range of available options to deal with the effects.

The study requred is to be conducted in consultation with the Los Angeles City and County sanitation agencies which have observed examples of corrosion, probably caused by sulfides. The Administrator shall submit a report on the results of the study, together with recommendations for measures to reduce the corrosion of treatment works, to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works within one year of the date of enactment of H.R. 8. There is authorized to be appropriated $2,000,000 to carry out this section for fiscal years beginning after September 30, 1985.

In recent years in Southern California, it has become apparent that sulfide corrosion of concrete sewers and wastewater treatment facilities is creating severe damages. The causes of sulfide corrosion of concrete structures include high strength sewage, high temperature, acidic wastewater, lack of aeration of sewage and low cleaning velocities in the sewer system. The climatic conditions in Southern California and the use of sanitary sewers which do not accept rainfall tend to promote conditions causing sulfide corrosion. The lack of rainfall tends to eliminate the periodic flushing and cleaning of the sewer slimes which create sulfides. In less desert-like climates this periodic flushing of sewers tends to reduce sewer corrosion problems.

The existence of sulfides in large concrete sewers throughout the Los Angeles basin results in the formation of sulfuric acid which corrodes the sewers and creates the potential for sewer collapse.

It is necessary to perform an extensive evaluation of the interactions of the many factors that may be causing sulfide corrosion of sewerage structures. The interrelated remedial effects of the periodic cleansing of concrete sewers, the effectiveness of adding chemicals that eliminate sewer slimes, the effect of in-sewer aeration of wastewater and other remedial measures need to be properly evaluated. This amendment will provide for funding for the Administrator to work cooperatively with the Los Angeles County sanitation agencies to develop methods to deal with this problem.

SECTION 49—PULP MILL STUDY

This section directs the Administrator of the Environmental Protection Agency, in consultation with the State of Alaska, to conduct and prepare a study-report which shall determine the feasibility of resolving the air pollution control, solid waste disposal, water quality standards compliance, and energy impacts associated with the achievement of best practicable technology under section 301 of the Federal Water Pollution Control Act with respect to the Alaska Lumber and Pulp Company, located at Sitka, Alaska (NPDES permit numbered AK000053-1).

The Administrator shall submit such study-report to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than 18 days after the date of enactment of H.R. 8.

SECTION 50—STUDY OF RAINFALL INDUCED INFILTRATION INTO SEWER SYSTEMS

This section directs the Administrator to study problems associated with rainfall induced infiltration into wastewater treatment sewer systems. Not later than one year after the date of enactment of H.R. 8, the Administrator is to submit to Congress a report on the results of the study, along with recommendations on reasonable methods to reduce such infiltration and on regulatory mechanisms to address special problems associated with increased flows from such systems resulting from such infiltration.

SECTION 51—STUDY OF PH IN DISCHARGES FROM MINING OPERATIONS

This section directs the Administrator to study effluent limitations as they relate to pH in discharges from mining operations. Not later than one year after the date of the enactment of H.R. 8, the Administrator is to submit to Congress a report on the results of the study along with recommendations as to the feasibility of permitting modifications of such effluent limitations to permit lower pH in such discharges than is otherwise required.

Concerns have been expressed that the EPA developed effluent limits for pH applicable to coal mining operations may be in some instances incompatible with the tolerance levels of established aquatic life within and surrounding the permit area of the coal mine, especially in the Appalachian region.

For the coal mining industry, the Administrator has assigned a pH effluent limit for Best Available Technology and new sources between 6 and 9. Some feel, however, that this range may be incompatible with the natural characteristics of the receiving streams and may fail to take into consideration the water quality baseline conditions.

The Committee has been informed that the scientific community often prescribes "natural" rainwaters as having a pH value significantly below pH 6 and that many of the streams in Appalachia exhibit natural acidity below this pH 6 level. The majority of mining operations in Appalachian coal fields occurs in the headwaters of streams and in these areas, especially those with shallow groundwater characteristics, seeps and springs have a naturally low pH value. A substantial collection of baseline stream data for permitting purposes exists and can be used by the EPA to assist in its determination as to the appropriateness of adjusting the lower boundary of the pH range for the coal mining industry, either nationally, regionally or on a site specific case-by-case basis.

The study requested by this section should take into account these items and be submitted to the Congress, along with any recommendations, not later than one year after date of enactment of this Act.

SECTION 52—STUDY OF POLLUTION IN LAKE PEND OREILLE, IDAHO

The Administrator is directed to conduct a comprehensive study of the sources of pollution in Lake Pend Oreille, Idaho, and the Clark Fork River and its tributaries, Idaho, Montana, and Washington, for the purpose of identifying the sources of such pollution. In carrying out this provision, the Administrator is to consider existing studies, surveys, and test results concerning such pollution.

Not later than one year after the date of the enactment of H.R. 8, the Administrator is to submit to Congress a report on the results of the study conducted under this section together with any recommendations.

SECTION 53—LIMITATION ON PAYMENTS

This section provides that no payments may be made under H.R. 8 except to the extent provided in advance in appropriation Acts.

COMPLIANCE WITH CLAUSE 2(l) OF RULE XI OF THE RULES OF THE HOUSE OF REPRESENTATIVES

(1) With reference to clause 2(l)(3)(A) of rule XI of the House of Representatives, the Subcommittee on Investigations and Oversight did not hold hearings on the specific subject matter of the legislation.

That Subcommittee has, however, conducted investigations of the implementation of various aspects of the Federal Water Pollution Control Program over the past several years, and has issued a number of reports on these matters.

The Subcommittee on Water Resources held hearings on the bill.

(2) With respect to clause 2(l)(3)(B) of rule XI of the House of Representatives, H.R. 8, as reported, does not provide new budget authority or increase tax expenditures. Accordingly, a statement pursuant to section 308(a) of the Congressional Budget Act is not required.

(3) With reference to clause 2(l)(3)(C) of rule XI of Rules of the House of Representatives, the Committee has received a report prepared by the Congressional Budget Office under section 403 to the Congressional Budget Act. That report is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 18, 1985.

Hon. JAMES J. HOWARD,
Chairman, Committee on Public Works and Transportation, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 8, the Water Quality Renewal Act of 1985.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director*.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 8.
2. Bill title: Water Quality Renewal Act of 1985.
3. Bill status: As ordered reported by the House Committee on Public Works and Transportation, May 28, 1985.
4. Bill purpose: H.R. 8 would reauthorize water quality programs administered by the Environmental Protection Agency (EPA), including the construction grants program, through fiscal year 1990. The bill would require the establishment and implementation of a new non-point source control program as well as a program to control individual sources of toxic contaminants in navigable waters.

Authorization for grants to aid states in capitalizing revolving funds would begin at a level of $0.6 billion a year in 1986 through 1990, would rise to $2.4 billion in 1991, and then gradually drop to $0.6 billion by 1994.

Finally, H.R. 8 would require EPA to perform studies and produce reports on issues such as de minimis discharges and sulfide corrosion. Demonstration projects, feasibility studies, and additional grants for water quality-related projects would be authorized for specific sites. Authorized appropriations for such activities would total an estimated $1.1 billion through 1990.

5. Estimated cost to the Federal Government:

[By fiscal years, in million of dollars]

	1985	1986	1987	1988	1989	1990
Estimated authorization level	625	4,615	3,704	3,704	3,694	3,694
Less: Existing appropriation	216					
Net additional authorization level	409	4,615	3,704	3,704	3,694	3,694
Estimated outlays	272	1,206	1,699	2,577	3,174	3,378

An additional $7.5 billion in outlays would occur after fiscal year 1990.

H.R. 8 would establish an individual control strategy program for toxic pollutants. States (or the EPA, if states fail to act) would be required to develop individual control strategies for all navigable waters that are not expected to meet standards for toxic discharges. Each strategy would be promulgated as a final regulation that would then be implemented by modifying existing discharge permits. Those 37 states that have been delegated permitting authority would bear the cost of implementation. In all other cases, EPA would bear this expense. It is likely that the costs of developing, reviewing, and implementing the individual control strategies could be substantial, but with the information available it is not possible to estimate the costs to the Federal Government.

The costs of this bill fall within budget function 300.

Basis of estimate: For purposes of this estimate, it is assumed that H.R. 8 will be enacted during fiscal year 1985 and that the full sums authorized will be appropriated for each fiscal year. The authorization levels are those specified in the bill, plus estimated 1986 authorizations totaling $550 million for the Newtown and San Diego projects. Money for the Chippewa Township project was awarded in fiscal year 1984, and no additional funds are expected to be required. The 1985 authorization represents the difference between the amounts authorized in the bill for 1985 and appropriations to date for those programs with new 1985 authorizations. The 1985 authorization level also includes $25.3 million for specific projects authorized in Section 26 that have no effective date specified. Outlays are estimated on the basis of historical spending patterns and infomation obtained from the EPA.

6. Estimated cost to State and local governments: CBO has not completed its estimate of the costs to state and local governments, which could be substantial. This estimate will be transmitted separately at a later date.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Deb Reis.

10. Estimate approved by: Robert A Sunshine, for James L. Blum, Assistant Director for Budget Analysis.

(4) With reference to clause (2)(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has not received a report from the Committee on Government Operations pertaining to this subject matter.

(5) With reference to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the following information is provided: The effect of carrying out H.R. 8, as reported, should be negligible with respect to prices and costs.

COST OF LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires a statement of the estimated costs to the United States which would be incurred in carrying out H.R. 8, as reported, in Fiscal Year 1985 and each of the following five years. However, under paragraph (d) of clause 7 its provisions do not apply when the Committee has received a timely report from the Congressional Budget Office.

COMMITTEE ACTION AND VOTE

The Committee, in compliance with rule XI(2)(l)(2)(A) of the Rules of the House of Representatives, reports favorably the bill H.R. 8, as amended.

The Committee ordered the bill reported by voice vote.

SUPPLEMENTAL VIEWS OF CONGRESSMAN ARLAN STANGELAND

I commend the efforts of the Committee on Public Works and Transportation in developing the Water Quality Renewal Act of 1985. H.R. 8 is a bill that provides a balanced and comprehensive reauthorization of one of the Nation's most important environmental laws, the Federal Water Pollution Control Act, also referred to as the Clean Water Act. Through the able leadership of Chairman Howard and the Ranking Republican Member, Gene Snyder, the Committee has developed a strong and responsible bill, one that is sensitive to the needs of the environment as well as the need for fiscal restraint. Considerable credit for this achievement goes to the tireless dedication of the Chairman of the Subcommittee on Water Resources, Bob Roe, whose spirit of cooperation and compromise has helped make this bill possible. It is a bill that I am proud to support.

While I support the bill in its totality, I also believe that there is one area concerning which the Committee could have done more to improve the Act's flexibility and its overall ability to ensure efficient and effective water pollution control. I believe that the Act should be amended to allow, under limited and protective conditions, certain municipalities to operate under a local alternative to the nationally mandated standards pursuant to Section 307 of the Act for pretreatment of pollutants discharged into publicily owned treatment works.

The national categorical pretreatment program, called for under Section 307 of the Act, is appropriate for the majority of communities in the United States. At the same time, there are cities that can and have developed and are operating their own pretreatment programs very successfully. These cities should be recognized for their excellent performance and allowed to continue to operate under their different but environmentally protective local pretreatment programs.

During Subcommittee markup, I offered an amendment which provided a limited number of cities an opportunity to operate under equivalent pretreatment programs if they could adequately show to the satisfaction of the Administrator of the Environmental Protection Agency that implementation of the city's locally developed program was at least as effective and environmentally protective as that required by the national categorical pretreatment standards. I believe that, although the amendment failed to win Subcommittee approval, the amendment is one that is entitled to further consideration by my colleagues.

Under my amendment, in order to proceed with an equivalency option, a local treatment program would have to control indirect industrial dischargers to avoid pass-through of pollutants, prevent interference with treatment works operations, and preserve sludge disposal options. Before being approved for operation, the publicly owned treatment works (POTW) would have to be achieving secondary treatment and would have to show that it had adequate funding and resources—technical, legal, and administrative—to implement the local program.

POTWs that are not inclined or do not have the resources to develop and maintain a local program would continue to be required to comply with the national categorical standards.

The current EPA pretreatment program, centered on national technology-based pretreatment standards, does not properly take into account whether all of the treatment required by the national standards is needed in every case. This can, and often does, result in costly, redundant and wasteful treatment by industry and POTWs.

I believe that, as a general rule, local conditions are handled best by local entities developing locally-responsive programs. Because many water quality problems are uniquely site specific and cannot readily be solved by uniform national standards, I believe that functioning equivalent, locally-controlled pretreatment programs should be able to direct resources to particular site-specific problems rather than to treatment for treatment's sake.

In 1977 Congress amended the Act to provide that, if a POTW were capable of removing pollutants without causing problems with its operations, industrial dischargers into the POTW should be given credit for such removals. In response to this mandate, EPA developed the present removal credit regulations, which were supposed to alleviate the problem of redundant treatment by POTWs and industrial dischargers. However, the regulations are so complex and restrictive that many POTWs have not applied for those removal credits. Industrial dischargers must therefore often continue to install treatment technology and meet pretreatment limits even though a POTW may remove some or all of the pollutants and even though the environment and the operation of the POTW could be protected as well or better under a different locally developed program. Implementation of a locally controlled pretreatment program would allow for reasonable resolution of this problem. In most cases the national program will be used. The efficiency and savings of local control, however, make a local option program desirable in certain situations.

I want to stress that the approach reflected in my amendment is not a proposal promoted solely by industry. It is also strongly supported by the States, cities, and sewage treatment agencies throughout the Nation. During the consideration of Clean Water Act amendments in the 98th Congress, a local pretreatment equivalency program was strongly supported by the Association of Metropolitan Sewerage Agencies, the United States Conference of Mayors, and the National League of Cities.

Under my amendment, a rigorous monitoring program would be required for every local system obtaining the authority provided. The monitoring is envisioned as going beyond current Federal law and would be specifically designed to advance the state of the art of biological monitoring and the development of toxicity data for receiving streams.

The proposal would not eliminate any existing enforcement authority. Both the local and State governments have undiminished enforcement authority over industrial users of a POTW through the requirements of this proposal and through the existing provisions of the Act. Federal and citizen enforcement is available through Section 309(f), 505(a) and (f), Section 307(d) and EPA's general pretreatment regulations.

In summary, I believe that it is unwise to require compliance with Federal categorical standards when other, perhaps less costly, methods are available which are just as effective in achieving the goals of the Act. Furthermore, a rigid approach may inhibit the development of new initiatives that could greatly improve water quality if greater flexibility were allowed to be employed by the Act. Accordingly, H.R. 8 should be further amended to authorize a demonstration program for local pretreatment programs which achieve pretreatment at least equivalent to that required under national standards but which employ a method of pretreatment which is different from the categorical pretreatment standards mandated under Section 307(b) of the Act.

ARLAN STANGELAND.

SUPPLEMENTAL VIEWS ON H.R. 8

We strongly commend the Committee and particularly its leadership, Committee Chairman James J. Howard, Water Resources Subcommittee Chairman Robert A. Roe, and Ranking Members Gene Snyder and Arlan Stangeland, on a very strong environmental bill, and urge its passage by the House.

We believe, however, that several further provisions should be incorporated into this year's amendments to the Federal Water Pollution Control Act, to cement the environmental gains of the Act's first 13 years, and to continue on course toward progress in water pollution control.

ANTI-BACKSLIDING

"Backsliding," or the relaxation of requirements when a permit is reissued, renewed or modified, is a major concern not addressed in this bill. There may be some valid reasons for relaxing a permit's requirements, but we believe these should be carefully spelled out in law. There is little if any justification for turning off, disconnecting, or otherwise rendering less effective, treatment which is working well, at reasonable costs. We are particularly concerned by recent attempts to reallocate, and to allow the sale, purchase and trading of, wasteload allocations. The effect of such procedures would be to freeze water quality at the standard, the lowest quality allowed by law. This is clearly counter to the intent of the Act, which states that, except under conditions spelled out in the Act, ". . . the discharge of any pollutant by any person shall be unlawful," and would turn a prohibition of polluting the public's water into a private property right to pollute.

CITIZEN SUITS

Since enactment of the Clean Water Act and other environmental legislation in the early 1970's, citizen participation has played a vital part in enforcing and applying federal law. The bill as drafted (Sec. 25) would give EPA new authority to assess administrative civil penalties without going to court. However, if EPA chose to exercise this authority, citizens would be precluded from seeking legal redress in cases of violations of the Clean Water Act. Prompt action on violations of the Act would be fostered by allowing citizen suits when violations occur. The bill would be improved if it did not include language limiting citizen suits when violations occur.

FUNDAMENTALLY DIFFERENT FACTORS VARIANCES

Variances from uniform national standards for production processes which are fundamentally different from those evaluated during the rulemaking process are a creature of the Environmental

Protection Agency, recently ratified by the Supreme Court *(Chemical Manufacturers Ass.* v. *Natural Resources Defense Council, Inc.* No. 83-1013—U.S. Feb. 27, 1985). They have never received Congressional approval or legislative sanction.

It is thus appropriate for Congress to provide the direction needed for this procedure. We are pleased that H.R. 8 contains an FDF variances section (Sec. 20, Variances from the Application of Effluent Limitations), but we believe the provision could be strengthened in several ways.

The final language should establish a firm deadline for EPA to act on a variance application. It should make clear that the applicant makes his application, or goes to court, on his own time; and that if he is turned down, he must comply by the same date as his competition. The final language should apply to all standards, not just to those issued after this bill is enacted. Costs should not be a consideration in granting a waiver. Finally, any waiver should not allow any more adverse non-water quality environmental impact than would be produced without the variance.

WATER QUALITY VARIANCES

Section 301(g) authorizes variances from BAT for nonconventional pollutants under certain conditions. According to EPA, there are some 55,000 identified compounds that could qualify as nonconventionals, most of which have very littile scientific data relating to environmental impacts. We urge consideration of the Administration's proposed amendment to 301(g), which would limit water quality variances to pollutants to which EPA can judge the environmental harm, thereby avoiding variances for many highly toxic pollutants whose environmental impacts have not been adequately studied.

FEES

It is extrememy expensive for EPA and the States to process waiver applications. We believe there should be a provision authorizing the collection of these costs from applicants.

SECTION 402 PERMIT REQUIREMENTS FOR LOG TRANSFER FACILITIES

The Committee wisely declined to exempt discharges from log transfer facilities from permit requirements under section 402 of the Act. We urge continued resistance to this exemption during further consideration of clean water legislation.

It has been argued that mandating a 402 permit duplicates existing requirements that such operations obtain permits under Section 404. We do not believe that dischargers should be required to obtain duplicative and unnecessary permits. However, EPA and the Army Corps of Engineers have authority under existing law to eliminate duplication between Section 404 and Section 402 permits. The purposes of these two sections are fundamentally different: 404 permits apply to the dredge and fill operations in constructing log dumps, and 402 permits apply to the pollutant discharges from the dumps after they are built. Where duplication exists, EPA and the Corps already have the authority to eliminate it.

For at least a decade, federal courts have considered log bark to be a "pollutant" requiring a permit under Section 402 (*U.S.* v. *Kennebec Log Driving Co.*, 399 F. Supp. 754 D. Me. 1975, aff'd, 530 F. 2d. 446 1st Cir. 1976). The federal court in Alaska followed this case in upholding the requirement that bark and other pollutants from log dumps must be regulated under the NPDES Section 402 permit program (Angoon v. Marsh, J83-001, 1983). EPA agreed with the court and did not appeal the decision.

Studies by federal and state agencies indicate that log dumps do degrade water quality and reduce marine life and that log debris is highly toxic. We feel that retention of existing language in the bill is important to prevent the serious environmental damage which can be caused by log dumps.

STORM WATER DISCHARGES

Storm water is one of the most knotty problems with which the Environmental Protection Agency and others have wrestled. We believe that storm water associated with industrial areas must be regulated by permit. However, we recognize that there is at least an argument to be made, from the standpoint of resource drain on both permitting agencies and potential applicants, that certain other storm water discharges, such as those composed entirely of storm water from residential, commercial and other non-industrial sites, not require permits.

We approach the issue of any kind of exemption with great wariness, and are extremely concerned for the implications of broad exemptions without knowing the exact universe being exempted, and the environmental impacts of those exemptions. We further believe that any exemption based on the impact on receiving waters would set too high an environmental damage threshold, and would pose too difficult a test on the permitting agencies.

Therefore, if exemptions are to be made for storm water, we urge Congress to proceed with extreme caution, and clearly define the dischargers, or types of discharges, to be exempted. Opportunity must be provided for EPA to require permits, and for any person to petition the Administrator to require permits, where a discharge is of significant concern. We also recommend that Congress explore the feasibility of designating certain of these discharges as nonpoint sources as a means to further facilitate their management.

10-YEAR PERMITS

We appreciate the committee's efforts to address our previous concerns about 10-year permits (Sec. 27), and hope that the two-tier system adopted by the Committee is workable, although we have some concerns in this regard. We urge that 10-year permits, if retained in final language, be modified whenever EPA issues new standards under Sections 301, 302, 304, 307(b) 403 and 405 of the Act.

WASTEWATER TREATMENT CONSTRUCTION GRANTS FORMULA

The Committee has shown wisdom in preserving the existing distribution formula for the construction grants program. Proposals in the other body to shift the formula to emphasize future construction would set back our efforts to address existing water quality problems. In addition, the current formula more closely meets the 1984 EPA needs survey than does the proposal in the other body. We believe that the committee should work aggressively on the floor and in conference to maintain the existing, highly successful formula.

We believe the above are important elements of water quality improvement, and should be included in this year's Clean Water Act reauthorization. We commend the Committee on producing a strong environmental bill, and will be glad to work with the Committee in any capacity to add these final, but important, provisions.

JAMES L. OBERSTAR.
BOB EDGAR.
E. TOWNS.
CHET ATKINS.

SUPPLEMENTAL VIEWS OF CONGRESSMAN JIM MOODY

With one single exception, described below, I associate myself with and endorse the supplemental views of Mr. Oberstar, Mr. Edgar, and Mr. Towns. Like them, I want to say that under the leadership of Chairmen Howard and Roe, and Ranking Members Snyder and Stangeland, the Committee has produced a strong clean water bill that deserves favorable consideration and passage by the House.

The only disagreement I have with the remarks of Mr. Obserstar, *et al,* is the paragraph called "Anti-backsliding." Specifically I differ with their remarks opposing the reallocation—by sale, purchase, or trading—of wasteload allocations. I strongly dispute that such practices *necessarily* lower water quality. For example, if a certain water basin or river section is at a water pollution maximum under an existing allocation, and a new factory with a more effective treatment technology could replace an older factory using a less effective treatment process only if it could buy out its wasteload allocation, then prohibiting that sale or trade under an "anti-backsliding" restriction would actually keep water pollution higher than it would be.

If the only reason for buying or trading wasteload allocations were to evade compliance with existing standards, I, indeed, would oppose it. But that is not the only possibility. Trading and conveying pollution "rights" under an overall pollution level occurs now in the Fox River valley in Wisconsin, with very favorable results.

Total inflexibility in wasteload trading would have the effect in many areas of blocking *any new industry or expanding existing plants.* Suppose a new plant could be opened only if: (1) it can achieve zero discharge; (2) the allowable wasteload is increased; or (3) the allowable wasteload is reallocated, "traded," or sold. Option #1 is naturally impossible. Option #2 is backsliding pure and simple—just what we are trying to prevent. Only the third approach—reallocation—would both permit economic efficiency as well as full consistency with the intent of the Clean Water Act.

How would such trades or reallocations be accomplished where no plant goes out of existence? One way would be to assess each existing plant for a portion of its allocation which, added up, would accommodate the new plant. For the existing plants to reduce their discharge so that a new plant can come in, they are going to have to spend some of their own resources to improve their discharge quality. Why shouldn't they be compensated for these expenses? Who would be hurt by such a sale or trade? No one, so long as the total allocation were to remain unchanged. But many would be benefited economically.

I believe this trade or swap scenario will, and should, occur with increasing frequency. We should prepare for it by not erecting prohibitions that appear to protect the environment but which, by freezing technology, may actually injure it.

JIM MOODY.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

FEDERAL WATER POLLUTION CONTROL ACT

TITLE I—RESEARCH AND RELATED PROGRAMS

DECLARATION OF GOALS AND POLICY

SEC. 101. (a) The objective is this Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this Act—

(1) * * *

* * * * * * *

(5) it is the national policy that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State; [and]

(6) it is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone, and the oceans[.]*; and*

(7) it is the national policy that plans for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this Act to be met through the control of both point and nonpoint sources of pollution.

* * * * * * *

RESEARCH, INVESTIGATIONS, TRAINING AND INFORMATION

SEC. 104. (a) * * *

* * * * * * *

(h)*(1)* The Administrator is authorized to enter into contracts with, or make grants to, public or private agencies and organizations and individuals for (A) the purpose of developing and demonstrating new or improved methods for the prevention, removal, reduction, and elimination of pollution in lakes, including the undesirable effects of nutrients and vegetation, and (B) the construction of publicly owned research facilities for such purpose.

(2) The Administrator shall submit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than one year after the date of the enactment of this paragraph a lake restoration guidance manual establishing procedures to guide future State and local efforts to improve water quality in lakes.

* * * * * * *

(q)(1) * * *

* * * * * * *

(4) Notwithstanding section 205(d) of this Act, from amounts that are set aside for a fiscal year under section 205(i) of this Act and are not obligated by the end of the 24-month period of availability for such amounts under section 205(d), the Administrator shall make available $1,000,000 or such unobligated amount, whichever is less, to support a national clearinghouse within the Environmental Protection Agency to collect and disseminate information on small flows of sewage and innovative or alternative wastewater treatment processes and techniques, consistent with paragraph (3). This paragraph shall apply with respect to amounts set aside under section 205(i) for which the 24-month period of availability referred to in the preceding sentence ends on or after September 30, 1985.

* * * * * * *

(u) There is authorized to be appropriated (1) not to exceed $100,000,000 per fiscal year for the fiscal year ending June 30, 1973, the fiscal year ending June 30, 1974, and the fiscal year ending June 30, 1975, and not to exceed $14,039,000 for the fiscal year ending September 30, 1980, and not to exceed $20,697,000 for the fiscal year ending September 30, 1981, and not to exceed $22,770,000 for the fiscal year ending September 30, 1982, *and not to exceed $23,770,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990,* for carrying out the provisions of this section, other than subsection (g) (1) and (2), (p), (r), and (t), except that such authorizations are not for any research, development, or demonstration activity prusuant to such provisions; (2) not to exceed $7,500,000 for fiscal years 1973, 1974, and 1975, $2,000,000 for fiscal year 1977, $3,000,000 for fiscal year 1978, $3,000,000 for fiscal year 1979, $3,000,00 for fiscal year 1980, $3,000,000 for fiscal year 1981, **[**and $3,000,000 for fiscal year 1982,**]** *$3,000,000 for fiscal year 1982, and $3,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990,* for carrying out the provisions of subsection (g)(1); (3) not to exceed $2,500,000 for fiscal year 1973, 1974, and 1975, $1,000,000 for fiscal year 1977, $1,500,000 for fiscal year 1978, $1,500,000 for fiscal year 1979, $1,500,000 for fiscal year 1980, $1,500,000 for fiscal year 1981, **[**and $1,500,000 for fiscal year 1982,**]** *$1,500,000 for fiscal year 1982, and $1,500,000 per fiscal year for each of the fiscal years ending September 30, 1983, Septebmer 30, 1984, September 30, 1985,* *September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990,* for carrying out the provisions of subsection (g)(2); (4) not to exceed $10,000,000 for each of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (p); (5) not to exceed $15,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (r); and (6) not to exceed $10,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (t).

* * * * * * *

GRANTS FOR POLLUTION CONTROL PROGRAMS

SEC. 106. (a) There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purposes of this section—

(1) $60,000,000 for the fiscal year ending June 30, 1973; and

(2) $75,000,000 for the fiscal year ending June 30, 1974 and the fiscal year ending June 30, 1975, $100,000,000 per fiscal year for the fiscal year 1977, 1978, 1979, and 1980, $75,000,000 per fiscal year for the fiscal years 1981 and 1982, *and $75,000,000 per fiscal year for each of the fiscal years 1983, 1984, 1985, 1986, 1987, 1988, 1989, and 1990*;

for grants to States and to interstate agencies to assist them in administering programs for the prevention, reduction, and elimination of pollution, including enforcement directly or through appropriate State law enforcement officers or agencies.

* * * * * * *

DEFINITIONS AND AUTHORIZATIONS

SEC. 112. (a) * * *

* * * * * * *

(c) There are authorized to be appropriated $25,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, $6,000,000 for the fiscal year ending September 30, 1977, $7,000,000 for the fiscal year ending September 30, 1978, $7,000,000 for the fiscal year ending September 30, 1979, $7,000,000 for the fiscal year ending September 30, 1980, $7,000,000 for the fiscal year ending September 30, 1981, [and $7,000,000 for the fiscal year ending September 30, 1982,] *$7,000,000 for the fiscal year ending September 30, 1982, and $7,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, to carry out sections 109 through 112 of this Act.*

* * * * * * *

TITLE II—GRANTS FOR CONSTRUCTION OF TREATMENT WORKS

PURPOSE

Sec. 201. (a) * * *

*   *   *   *   *   *   *

(g)(1) The Administrator is authorized to make grants to any State, municipality, or intermunicipal or interstate agency for the construction of publicly owned treatment works. On and after October 1, 1984, grants under this title shall be made only for projects for secondary treatment or more stringent treatment, or any cost effective alternative thereto, new interceptors and appurtenances, **[**and**]** infiltration-in-flow correction**[**.**]**, *and projects to address water quality problems due to impacts of discharges from combined stormwater and sanitary sewer overflows.* Notwithstanding the preceding **[**sentence,**]** *sentences,* the Administrator may make grants on and after October 1, 1984, for *(A)* any project within the definition set forth in section 212(2) of this Act, other than for a project referred to in the preceding sentence, *and (B) any purpose for which a grant may be made under section 319(i) of this Act (including any innovative and alternative approaches for the control of nonpoint sources of pollution),* except that not more than 20 per centum (as determined by the Governor of the State) of the amount allotted to a State under section 205 of this Act for any fiscal year shall be obligated in such State under authority of this sentence.

*   *   *   *   *   *   *

(p) Time Limit on Resolving Certain Disputes.—In any case in which a dispute arises with respect to the awarding of a contract for construction of treatment works by a grantee of funds under this title and a party to such dispute files an appeal with the Administrator under this title for resolution of such dispute, the Administrator shall make a final decision on such appeal within 60 days of the filing of such appeal.

FEDERAL SHARE

Sec. 202. (a)(1) The amount of any grant for treatment works made under this Act from funds authorized for any fiscal year beginning after June 30, 1971, and ending before October 1, 1984, shall be 75 per centum of the cost of construction thereof (as approved by the Administrator), and for any fiscal year beginning on or after October 1, 1984, shall be 55 per centum of the cost of construction thereof (as approved by the Administrator), unless modified to a lower percentage rate uniform throughout a State by the Governor of that State with the concurrence of the Administrator. Within ninety days after the enactment of this sentence the Administrator shall issue guidelines for concurrence in any such modification, which shall provide for the consideration of the unobligated balance of sums allocated to the State under section 205 of this Act, the need for assistance under this title in such State, and the availability of State grant assistance to replace the Federal share reduced by such modification. The payment of any such reduced Federal share shall not constitute an obligation on the part of the United States or a claim on the part of any State or grantee to reimbursement for the portion of the Federal share reduced in any such State. Any grant (other than for reimbursement) made prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 from any funds authorized for any fiscal year beginning after June 30, 1971, shall, upon the request of the applicant, be increased to the applicable percentage under this sector. Notwithstanding the first sentence of this paragraph, in any case where a primary, secondary, or advanced waste treatment facility or its related interceptors or a project for infiltration-in-flow correction *or a project to address water quality problems due to impacts of discharges from combined storm water and sanitary sewer overflows* has received a grant for erection, building, acquisition, alteration, remodeling, improvement, extension, or correction before October 1, 1984, all segments and phases of such facility, interceptors, [and] project for infiltration-in-flow correction*, and project to address such problems* shall be eligible for grants at 75 per centum of the cost of construction thereof. *Notwithstanding the first sentence of this paragraph, in the case of a project for which an application for a grant under this title has been made to the Administrator before October 1, 1984, and which project is under judicial injunction on such date prohibiting its construction, such project shall be eligible for grants at 75 percent of the cost of construction thereof.*

* * * * * * *

(3) In addition to any grant made pursuant to paragraph (2) of this subsection, the Administrator is authorized to make a grant to fund all of the costs of the modification or replacement of any facilities constructed with a grant made pursuant to paragraph (2) if the Administrator finds that such facilities have not met design performance specifications unless such failure is attributable to negligence on the part of any person and if such failure has significantly increased capital or operating and maintenance expenditures. *In addition, the Administrator is authorized to make a grant to fund all of the costs of the modification or replacement of biodisc equipment (rotating biological contractors) in any publicly owned treatment works if the Administrator finds that such equipment has failed to meet design performance specifications, unless such failure is attributable to negligence on the part of any person, and if such failure has significantly increased capital or operating and maintenance expenditures.*

* * * * * * *

PLANS, SPECIFICATIONS, ESTIMATES, AND PAYMENTS

SEC. 203. (a)*(1)* Each applicant for a grant shall submit to the Administrator for his approval, plans, specifications, and estimates for each proposal project for the construction of treatment works for which a grant is applied for under section 201(g)(1) from funds allotted to the State under section 205 and which otherwise meets the requirements of this Act. The Administrator shall act upon such plans, specifications, and estimates as soon as practicable after the same have been submitted, and his approval of any such plans, specifications, and estimates shall be deemed a contractual obligation of the United States for the payment of its proportional contribution to such project.

(2)(A) Before taking final action on any plans, specification, and estimates submitted under this subsection, the Administrator shall enter into a written agreement with the applicant which establishes and specifies which items of the proposed project are eligible for Federal payments under this section. The Administrator may not later modify such eligibility determinations unless they are found to have been made in violation of applicable Federal statutes and regulations.

(B) Eligibility determinations under this paragraph shall not preclude the Administrator from auditing a project pursuant to section 501 of this Act, or other authority, or from withholding or recovering Federal funds for costs which are found to be unreasonable, unsupported by adequate documentation, or otherwise unallowable under applicable Federal cost principles, or which are incurred on a project which fails to meet the design specifications or effluent limitations contained in the grant agreement and permit pursuant to section 402 of this Act for such project.

(3) The approval of construction plans and specifications by the Administrator under this section shall not include a determination or approval of the treatment work's unit processes, or the configuration of the treatment work's unit processes, which constitute the treatment technology. The Administrator shall not approve plans, specifications, and estimates for a project under this section unless the applicant certifies that the proposed unit processes and treatment technology are capable of meeting the effluent limitations for which such process and technology are designed.

(4) In the case of a treatment works that has an estimated total cost of $8,000,000 or less (as determined by the Administrator), and the population of the applicant municipality is twenty-five thousand or less (according to the most recent United States census), upon completion of an approved facility plan, a single grant may be awarded for the combined Federal share of the cost of preparing construction plans and specifications, and the building and erection of the treatment works.

* * * * * * *

(f) Turnkey Contracts.—

(1) General authority for low cost projects.—After completion of an approved facility plan for construction of a treatment works which has an estimated total cost of $8,000,000 or less (as determined by the Administrator), the applicant proposing to construct such treatment works may, in lieu of proceeding under the other provisions of this section, enter into an agreement with the Administrator under this subsection for the preparation of construction plans and specifications and the building and erection of such treatment works.

(2) Required terms and conditions.—All agreement entered into under this subsection shall—

(A) setforth an amount agreed to by the Administrator and the applicant as the maximum Federal contribution to the project, based upon a determination of the federally eli-

gible costs of the project at the applicable Federal share under section 202 of this Act;

(B) set forth a date for completion of construction of the treatment works by the applicant and a schedule of payments by the Administrator of the Federal contribution to the project;

(C) contain such assurances by the applicant as the Administrator may require that (i) the proposed treatment works will be an operable unit and will meet all the requirements of this title (except as otherwise provided in paragraph (3) of this subsection), and (ii) not later than one year after the date specified as the date for completion of construction of the treatment works, the treatment works will be operating so as to meet the requirements of any applicable permit for such treatment works under section 402 of this Act;

(D) require the applicant and any agent or contractor of the applicant to provide a bond in an amount determined necessary by the Administrator to protect the Federal interest in the project; and

(E) contain such other terms and conditions as the Administrator deems necessary to ensure compliance with this title (except as provided in paragraph (3) of this subsection).

(3) NONAPPLICABILITY OF CERTAIN STATUTORY REQUIREMENTS.—Section 201(g)(3), 203 (other than this subsection and except with respect to the development and approval of a facility plan), 204(a)(5), 204(a)(6), and 204(d)(1) shall not apply to grants made pursuant to this subsection.

(4) INTEREST-BEARING ACCOUNTS.—

(A) DEPOSIT OF FEDERAL CONTRIBUTION.—Upon entering into an agreement under this subsection, the Administrator shall deposit, from amounts allotted to the State for such fiscal year under section 205 of this Act, the amount of the Federal contribution to the project agreed upon by the Administrator and the applicant into an interest-bearing account. Such amount shall be available only for making payments to the grantee in accordance with the schedule contained in the agreement.

(B) LIMITATION ON USE OF EARNED INTEREST.—Interest earned on amounts in the account under subparagraph (A) shall be available for payments to the grantee. Such payments shall be made solely for the purpose of reducing the net interest costs incurred by the grantee on obligations issued by the grantee for construction of such treatment works. The amount of such payments shall be in addition to the Federal share of the project other wise allowable. The amount of any such interest earned which exceeds the amount of such interest costs incurred shall be deposited in the general fund of the Treasury after the final audit of the project.

(5) ADMINISTRATIVE PROVISIONS.—

(A) RESERVATION UNTIL FINAL AUDIT.—The Administrator shall reserve a portion of the amount in the account under paragraph (4)(A) until the final audit of the project.

(B) Reallotment of any excess.—If the amount deposited into the account by the Administrator under paragraph (4)(A) exceeds the cost of preparing construction plans and specifications and the building and erection of the treatment works, the Administrator shall reallot the amount of the excess to the State in which such treatment works is located for the fiscal year in which such audit is completed.

(6) Per state limitations.—The Administrator shall not obligate more than 20 percent of the amount allotted to a State for a fiscal year under section 205 of this Act for grants pursuant to this subsection.

(7) Limitation on federal contribution.—In no event shall the Federal contribution for the cost of preparing construction plans and specifications and the building and erection of treatment works pursuant to this subsection exceed the amount agreed upon under paragraph (2), plus interest paid to the grantee under paragraph (4)(B).

(8) Noncompliance with agreement.—In any case in which the recipient of a grant made pursuant to this subsection does not comply with the terms of the agreement entered into under paragraph (2), the Administrator is authorized to take such action as may be necessary to recover the amount of the Federal contribution to the project.

(9) Limitation on eligibility of recipients of turnkey grants.—A recipient of a grant made pursuant to this subsection shall not be eligible for any other grants under this title.

LIMITATIONS AND CONDITIONS

Sec. 204. (a) Before approving grants for any project for any treatment works under section 201(g)(1) the Administrator shall determine—

[(1) that such works are included in any applicable areawide waste treatment management plan developed under section 208 of this Act;]

(1) that any required areawide waste treatment management plan under section 208 of this Act (A) is being implemented for such area and the proposed treatment works are included in such plan, or (B) is being developed for such area and reasonable progress is being made toward its implementation and the proposed treatment works will be included in such plan;

[(2) that such works are in conformity with any applicable State plan under section 303(e) of this Act;]

(2) that (A) the State in which the project is to be located (i) is implementing any required plan under section 303(e) of this Act and the proposed treatment works are in conformity with such plan, or (ii) is developing such a plan and the proposed treatment works will be in conformity with such plan, and (B) such State is in compliance with section 305(b) of this Act;

* * * * * * *

(b)(1) Notwithstanding any other provision of this title, the Administrator shall not approve any grant for any treatment works under section 201(g)(1) after March 1, 1973, unless he shall first have determined that the applicant (A) has adopted or will adopt a system of charges to assure that each recipient of waste treatment services within the applicant's jurisdiction, as determined by the Administrator, will pay its proportionate share (except as otherwise provided in this paragraph) of the costs of operation and maintenance (including replacement) of any waste treatment services provided by the applicant; (B) has legal, institutional, managerial, and financial capability to insure adequate construction, operation, and maintenance of treatment works throughout the applicant's jurisdiction, as determined by the Administrator. In any case where an applicant which, as of the date of enactment of this sentence, uses a system of dedicated ad valorem taxes and the Administrator determines that the applicant has a system of charges which results in the distribution of operation and maintenance costs for treatment works within the applicant's jurisdiction, to each user class, in proportion to the contribution to the total cost of operation and maintenance of such works by each user class (taking into account total waste water loading of such works, the constituent elements of the waste, and other appropriate factors), and such applicant is otherwise in compliance with clause (A) of this paragraph with respect to each industrial user, then such dedicated ad valorem tax system shall be deemed to be the user charge system meeting the requirements of clause (A) of this paragraph for the residential user class and such small non-residential user classes as defined by the Administrator. In defining small non-residential users, the Administrator shall consider the volume of wastes discharged into the treatment works by such users and the constituent elements of such wastes as well as such other factors as he deems appropriate. *A system of user charges which imposes a lower charge for low-income residential users (as defined by the Administrator) shall be deemed to be a user charge system meeting the requirements of clause (A) of this paragraph if the Administrator determines that such system was adopted after public notice and hearing.*

* * * * * * *

ALLOTMENT

SEC. 205. (a) * * *

* * * * * * *

(c)(1) * * *

"(2) Sums authorized to be appropriated pursuant to section 207 for the fiscal years 1982, 1983, 1984, and 1985 shall be allotted for each such year by the Administrator not later than the tenth day which begins after the date of enactment of the Municipal Wastewater Treatment Construction Grant Amendments of 1981. *Sums authorized to be appropriated pursuant to section 207 for the fiscal years 1986, 1987, 1988, 1989, and 1990 shall be allotted for each such year by the Administrator not later than the tenth day which begins after the date of the enactment of the Water Quality Renewal Act of 1985.* Notwithstanding any other provision of law, sums authorized for the fiscal year ending September 30, 1982, shall be allotted in accordance with table 3 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives. Sums authorized for the fiscal years ending September 30, 1983, September 30, 1984, [and September 30, 1985,] *September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990,* shall be allotted in accordance with the following table:

* * * * * * *

(e) For the fiscal years 1978, 1979 1980, 1981, 1982, 1983, 1984 [and 1985], *1985, 1986, 1987, 1988, 1989, and 1990,* no State shall receive less than one-half of 1 per centum of the total allotment under subsection (c) of this section, except that in the case of Guam, Virgin Islands, American Samoa, *the Commonwealth of the Northern Mariana Islands,* and the Trust Territories not more than [thirty-three one hundredths of 1 per centum] *two-thirds of one percent* in the aggregate shall be allotted to all [four] *five* of these jurisdictions. For the purpose of carrying out this subsection there are authorized to be appropriated, subject to such amounts as are provided in appropriation Acts, not to exceed $75,000,000 for each of fiscal years 1978, 1979, 1980, 1981, 1982, 1983, 1984, [and 1985] *1985, 1986, 1987, 1988, 1989, and 1990.* If for any fiscal year the amount appropriated under authority of this subsection is less than the amount necessary to carry out this subsection, the amount each State receives under this subsection for such year shall bear the same ratio to the amount such State would have received under this subsection in such year if the amount necessary to carry it out had been appropriated as the amount appropriated for such year bears to the amount necessary to carry out this subsection for such year.

* * * * * * *

(g)(1) The Administrator is authorized to reserve each fiscal year not to exceed 2 per centum authorized under section 207 of this title for purposes of the amount of the allotment made to each State under this section on or after October 1, 1977, except in the case of any fiscal year beginning on or after October 1, 1981, and ending before October 1, [1985,] *1990,* in which case the percentage authorized to be reserved shall not exceed 4 per centum[.], or $400,000 whichever amount is the greater. Sums so reserved shall be available for making grants to such State under paragraph (2) of this subsection for the same period as sums are available from such allotment under subsection (d) of this section, and any such grant shall be available for obligation only during such period. Any grant made from sums reserved under this subsection which has not been obligated by the end of the period for which available shall be added to the amount last allotted to such State under this section and shall be immediately available for obligation in the same manner and to the same extent as such last allotment. Sums authorized to be reserved by this paragraph shall be in addition to and not in lieu of any other funds which may be authorized to carry out this subsection.

* * * * * * *

(3) The Administrator shall reserve each fiscal year beginning after September 30, 1985, $900,000 from the sums available to the

State of New York under this subsection for such fiscal year, $900,000 from the sums available to the State of New Jersey under this subsection for such fiscal year, and $200,000 from the sums available to the State of Connecticut under this subsection for such fiscal year. Sums reserved under this paragraph shall be used by the Administrator to make a grant for each such fiscal year to the Interstate Sanitation Commission established by such States by interstate compact to carry out the functions of such Commission under this Act.

(h) The Administrator shall set aside from funds authorized for each fiscal year beginning on or after October 1, 1978, [four per centum] *a total (as determined by the Governor of the State) of not less than four percent nor more than seven and one-half percent* of the sum allotted to any State with a rural population of 25 per centum or more of the total population of such State, as determined by the Bureau of the Census. The Administrator may set aside no more than [four per centum] *seven and one-half percent* of the sums allotted to any other State for which the Governor requests such action. Such sums shall be available only for alternatives to conventional sewage treatment works for municipalities having a population of three thousand five hundred or less, or for the highly dispersed sections of larger municipalities, as defined by the Administrator.

(i) Not less than one-half of one per centum of funds allotted to a State for each of the fiscal years ending September 30, 1979, September 30, 1980, September 30, 1981, September 30, 1982, September 30, 1983, September 30, 1984, [and September 30, 1985,] *September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990,* under subsection (a) of this section shall be expended only for increasing the Federal share of grants for construction of treatment works utilizing innovative processes and techniques pursuant to section 202(a)(2) of this Act. Including the expenditures authorized by the preceding sentence, a total of two per centum of the funds allotted to a State for each of the fiscal years ending September 30, 1979, and September 30, 1980, and 3 per centum of the funds allotted to a State for the fiscal year ending September 30, 1981, under subsection (a) of this section shall be expended only for increasing grants for construction of treatment works from 75 per centum to 85 per centum pursuant to section 202(a)(2) of this Act. Including the expenditures authorized by the first sentence of this subsection, a total (as determined by the Governor of the State) of not less than 4 per centum nor more than 7½ per centum of the funds allotted to such State for any fiscal year beginning after September 30, 1981, under subsection (c) of this section shall be expended only for increasing the Federal share of grants for construction of treatment works pursuant to section 202(a)(2) of this Act.

(j)(1) * * *

* * * * * * *

(3) In carrying out planning with grants made under paragraph (2) of this subsection, a State shall develop jointly with local, regional, and interstate entities, a plan for carrying out the program and give funding priority to such entities and designated or undes-

ignated public comprehensive planning organizations to carry out the purposes of this subsection. *In giving such priority, the State shall allocate at least 50 percent of the amount granted to such State for a fiscal year under this subsection to regional and interstate public comprehensive planning organizations in such State, except in any fiscal year for which the Administrator, after consultation with the Governor of such State and such organizations, determines that allocation of at least 50 percent to such organizations will not substantially assist in achieving the goals of this Act.*

* * * * * * *

(l) RESERVATION FOR INVESTIGATIONS AND AUDITS.—One-quarter of one percent of any amount appropriated under section 207 of this Act for any fiscal year beginning after September 30, 1985, shall be reserved by the Administrator for carrying out investigations and audits authorized by this Act of projects for which funds are made available under this title. Such sums shall be in addition to, and not in lieu of, any sums otherwise appropriated for or allocated to the Office of the Inspector General.

* * * * * * *

AUTHORIZATION

SEC. 207. There is authorized to be appropriated to carry out this title, other than sections 206(e), 208 [and] 209, *and 220 (except as provided in section 220(b)(1)(B)),* for the fiscal year ending June 30, 1973, not exceed $5,000,000,000, for the fiscal year ending June 30, 1974, not to exceed $6,000,000,000, and for the fiscal year ending June 30, 1975, not to exceed $7,000,000,000, and, subject to such amounts as are provided in appropriation Acts for the fiscal year ending September 30, 1977, $1,000,000,000 for the fiscal year ending September 30, 1978, $4,500,000,000 and for the fiscal years ending September 30, 1979, September 30, 1980, not to exceed $5,000,000,000; for the fiscal year ending September 30, 1981, not to exceed $2,548,837,000; and for the fiscal years ending September 30, 1982, September 30, 1983, September 30, 1984, [and September 30, 1985,] *September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990,* not to exceed $2,400,000,000 per fiscal year.

AREAWIDE WASTE TREATMENT MANAGEMENT

SEC. 208. (a) * * *

* * * * * * *

(f)(1) * * *

* * * * * * *

(3) Each applicant for a grant under this subsection shall submit to the Administrator for his approval each proposal for which a grant is applied for under this subsection. The Administrator shall act upon such proposal as soon as practicable after it has been submitted, and his approval of that proposal shall be deemed a contractual obligation of the United States for the payment of its contribution to such proposal, subject to such amounts as are provided

in appropriation Acts. There is authorized to be appropriated to carry out this subsection not to exceed $50,000,000 for the fiscal year ending June 30, 1973, not to exceed $100,000,000 for the fiscal year ending June 30, 1974, **[and]** not to exceed $150,000,000 per fiscal year for the fiscal years ending June 30, 1975, September 30, 1977, September 30, 1978, September 30, 1979, and September 30, 1980, **[and]** not to exceed $100,000,000 per fiscal year for the fiscal years ending September 30, 1981, and September 30, 1982, *not to exceed $100,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, and September 30, 1985, and not to exceed $50,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990.*

* * * * * * *

(j)(1) * * *

* * * * * * *

(9) There are hereby authorized to be appropriated to the Secretary of Agriculture $200,000,000 for fiscal year 1979, $400,000,000 for fiscal year 1980, $100,000,000 for fiscal year 1981, **[and]** $100,000,000 for fiscal year 1982, *$100,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, and September 30, 1985, and $50,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, to carry out this subsection. The program authorized under this subsection shall be in addition to, and not in substitution of, other programs in such area authorized by this or any other public law.*

* * * * * * *

SEC. 220. GRANTS TO STATES FOR ESTABLISHMENT OF REVOLVING FUNDS.

(a) GENERAL AUTHORITY; AMOUNT OF GRANT.—

(1) GENERAL AUTHORITY; CONSTRUCTION ASSISTANCE.—Subject to the provisons of this section, the Administrator shall make grants to each State for the purpose of establishing a revolving fund for providing assistance to municipalities and intermunicipal and interstate agencies for construction of treatment works (as defined in section 212 of this Act) which are publicly owned.

(2) AMOUNT OF GRANT.—The amount of a grant to a State under this section for any fiscal year shall equal the amount allotted to such State under this section for such fiscal year.

(b) GENERAL GRANT REQUIREMENTS.—

(1) DEPOSITS INTO REVOLVING FUNDS.—

(A) MANDATORY DEPOSITS.—A grant shall not be made for a fiscal year to a State under this section unless the State has first deposited in the revolving fund established by the State under this section from non-Federal sources an amount equal to 20 percent of the amount allotted to the State under this section for such fiscal year.

(B) DISCRETIONARY DEPOSITS.—In addition to any amounts deposited in such revolving fund under subpara-

graph (A), the Governor of the State may deposit not to exceed 20 percent of the amount allotted to the State under section 205 of this Act for any fiscal year beginning after September 30, 1985, if the State has first deposited in such fund from non-Federal sources an amount equal to 20 percent of the amount to be deposited from such allotment.

(2) ANNUAL CERTIFICATION.—Each State shall submit to the Administrator annually a certification—

(A) that upon completion of any project for treatments works for which financial assistance is made available from the revolving fund established by such State under this section, discharges from such treatment works will meet all applicable requirements necessary to achieve applicable State and Federal water quality standards; and

(B) that such State will comply with all provisions of this section.

(c) FORMS OF REVOLVING FUND ASSISTANCE.—Assistance described in subsection (a)(1) for construction of treatment works may only be provided from a revolving fund established under subsection (d)(1) in the form of a loan, loan guarantee, payment to reduce interest on a loan, bond interest subsidy, bond guarantee, or purchase of insurance for obligtions. In addition, to the extent provided by State law, the State may issue revenue or general obligation bonds to finance projects for construction of treatment works described in subsection (a)(1) and on the State's priority list under section 216 using amounts in such fund as a source of revenue or security for the payment of interest and principal on such bonds, if the proceeds of the sale of such bonds are deposited in such fund.

(d) STATE WATER POLLUTION CONTROL REVOLVING FUNDS.—

(1) ESTABLISHMENT.—

(A) PURPOSES.—Each State shall establish a Water Pollution Control Revolving Fund to provide assistance described in subsection (a)(1) for construction of treatment works.

(B) STATE DEPOSITS.—The State shall deposit in such revolving fund any Federal funds allotted to the State under this section, any amounts received by the State for repayment of loans made by the State with amounts in such fund, any amounts required or authorized to be deposited in such fund subsection (a)(1), and any additional funds (except for funds received under any other section of this title) which the State wishes to deposit in such fund.

(2) ADMINISTRATIVE EXPENSES.—The State may use amounts in such revolving fund for the payment of expenses of administration of such fund; except that, in any fiscal year in which the State receives a grant under this section, the State may not use more than four percent of the amount of such grant for the payment of such expenses in such fiscal year.

(3) INVESTMENT.—The State may invest any portion of the funds in such revolving fund which is not currently needed for providing assistance described in subsection (a)(1) and for payment of administrative expenses such paragraph (2).

(4) LIMITATION TO PREVENT DOUBLE BENEFITS.—If the State makes, from such revolving fund, a loan which will finance the

cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works, the State shall ensure that if the recipient of such loan receives a grant under section 201(g) of this Act for construction of such treatment works and an allowance under section 201(l)(1) for non-Federal funds expended for such planning and preparation, such recipient will promptly repay such loan to the extent of such allowance.

(5) ELIGIBILITY OF NON-FEDERAL PORTION OF CONSTRUCTION GRANT PROJECTS.—The State may provide assistance from such revolving fund to an municipality or intermunicipal or interstate agency with respect to the non-Federal share of the costs of a project for which such municipality or agency is receiving assistance from the Administrator under any other section of this title.

(6) DEDICATED SOURCE OF REVENUE FOR LOAN REPAYMENT.—The State may only make a loan from such revolving fund to a municipality or inter-municipal or interstate agency if such municipality or agency first establishes a dedicated source of revenue for the repayment of such loan.

(7) PRIORITY LIST REQUIREMENT.—The State may provide financial assistance from such revolving fund only with respect to a project for construction of a treatment works described in subsection (a)(1) if such project is on the State's priority list under section 216 of this Act. Such assistance may be provided regardless of the rank of such project on such list.

(e) ADMINISTRATIVE PROVISIONS.—

(1) STATE REPORTS.—Each State shall annually make a full and complete report to the Administrator concerning the use of funds deposited in the revolving fund established by such State under this section in such manner as the Administrator shall prescribe.

(2) ANNUAL AUDITS.—The Administrator shall, at least on an annual basis, conduct or require each State to have independently conducted reviews and audits as may be deemed necessary or appropriate by the Administrator to carry out the objectives of this section. Audits of the use of funds deposited in the revolving fund established by such State shall be conducted in accordance with the auditing procedures of the General Accounting Office.

(f) APPLICABILITY OF OTHER PROVISIONS.—Except to the extent provided in this section, the other provisions of this title shall not apply to grants under this section.

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section not to exceed $600,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, not to exceed $2,400,000,000 for the fiscal year ending September 30, 1991, not to exceed $1,800,000,000 for the fiscal year ending September 30, 1992, not to exceed $1,200,000,000 for the fiscal year ending September 30, 1993, and not to exceed $600,000,000 for the fiscal year ending September 30, 1994.

(h) ALLOTMENT OF FUNDS.—

(1) Same formula as construction grant allotment.—Sums authorized to be appropriated to carry out this section for any fiscal year shall be allotted by the Administrator in the same manner and in accordance with the same table as the funds which are authorized to be appropriated under section 207 of this Act are allotted for such fiscal year.

(2) Exception.—For any fiscal year for which sums are authorized to be appropriated to carry out this section and for which sums are not authorized to be appropriated to carry out section 207, the sums authorized to be appropriated to carry out this section shall be allotted by the Administrator in the same manner and in accordance with the same table as the funds which were authorized to be appropriated under section 207 were allotted for the most recent fiscal year for which there was such an authorization under section 207.

(3) Reallotment.—

(A) Expiration of period of availability.—Sums allotted to a State under this subsection for a fiscal year shall remain available for a grant to such State for the fiscal year for which authorized and for the following two fiscal years. Any funds remaining after the last day of such third fiscal year shall be reallotted among the other States.

(B) Unutilized funds.—Any funds granted to a State for a fiscal year under this section which are not utilized by such State for providing assistance described in subsection (a)(1) for construction of treatment works during such fiscal year and the following two fiscal years shall be repaid to the Administrator for reallotment among the other States.

TITLE III—STANDARDS AND ENFORCEMENT

EFFLUENT LIMITATIONS

Sec. 301. (a) Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful.

(b) In order to carry out the objective of this Act there shall be achieved—

(1)(A) * * *

* * * * * * *

(2)(A) * * *

* * * * * * *

[(C) not later than July 1, 1984 with respect to all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph;]

(C) for all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as possible, but in no case later

than three years and six months after the date such limitations are established.

(D) for all toxic pollutants listed under paragraph (1) of subsection (a) of section 307 of this Act which are not referred to in subparagraph (C) of this paragraph compliance with effluent limitation in accordance with subparagraph (A) of this paragraph [not later than three years after the date such limitations are established]; *as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established*

[(E) not later than July 1, 1984, effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which in the case of pollutants identified pursuant to section 304(a)(4) of this Act require application of the best conventional pollutant control technology as determined in accordance with regulations issued by the Administrator pursuant to section 304(b)(4) of this Act; and]

(E) for all pollutants identified pursuant to section 304(a)(4) of this Act compliance with effluent limitations for categories and classes of point sources, other then publicly owned treatment works, which shall require application of the best conventional pollutant control technology, as determined in accordance with regulations issued by the Administrator pursuant to section 304(a)(4) of this Act, as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established;

[(F) for all pollutants (other than those subject to subparagraph (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph no later than 3 years after the date such limitations are established, or not later than July 1, 1984, whichever is later, but in no case later than July 1, 1987.]

(F) for all pollutants (other than those subject to subparagraph (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established.

* * * * * * *

(k) In the case of any facility subject to a permit under section 402 which proposes to comply with the requirements of subsection (b)(2)(A) of this section by the replacing existing production capacity with an innovative production process which will result in an effluent reduction significantly greater than that required by the limitation otherwise applicable to such facility and moves toward the national goal of eliminating the discharge of all pollutants, or with the installation of an innovative control technique that has a substantial likelihood for enabling the facility to comply with the applicable effluent limitation by achieving a significantly greater effluent reduction than that required by the applicable effluent limitation and moves toward the national goal of eliminating the discharge of all pollutants, or by achieving the required reduction with an innovative system that has the potential for significantly lower costs than the systems which have been determined by the Administrator to be economically achievable, the Administrator (or the State with an approved program under section 402, in consultation with the Administrator) may establish a date for compliance under subsection (b)(2)(A) of this section no later than [July 1, 1987,] *two years after the date for compliance with such effluent limitation which would otherwise be applicable under such subsection,* if it is also determined that such innovative system has the potential for industrywide application.

* * * * * * *

(n) VARIANCES.—

(1) FUNDAMENTALLY DIFFERENT FACTORS.—Upon application of any person who provides (or does not have a reasonable opportunity to provide) information to the Administrator in the rulemaking to establish or revise any effluent limitation under this section or section 304 of this Act, the Administrator may grant a variance from the application of such limitation with respect to the discharge of any pollutant by such person if the Administrator determines that factors relating to the facilities, equipment, and processes of such person are fundamentally different than the factors considered in such rulemaking.

(2) TIME LIMIT FOR APPLICATIONS.—An application for a variance from the application of an effluent limitation under this subsection must be filed with the Administrator within 180 days after the date on which such limitation is established or revised, as the case may be.

(3) TIME LIMIT FOR DECISION.—The Administrator, to the maximum extent practicable, shall approve or deny any application filed under this subsection within 180 days after the date such application is filed with the Administrator.

(4) LIMITATION ON APPLICABILITY.—This subsection shall only apply with respect to effluent limitations established or revised after the date of the enactment of this subsection.

(5) EFFECT OF DENIAL OF APPLICATION.—If an application for a variance from the application of an effluent limitation under this subsection is denied by the Administrator, the applicant must comply with such limitation as established or revised, as the case may be.

* * * * * * *

INFORMATION AND GUIDELINES

SEC. 304. (a)(1) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after the date of enactment of this title (and from time to time thereafter revise) criteria for water quality accurately reflecting the lastest scientific knowledge (A) on the kind and extent of all identifiable effects on health and welfare including, but not limited to, plankton, fish, shellfish, wildlife, plant life, shorelines, beaches, esthetics, and recreation which may be expected from the presence of pollutants in any body of water, including ground water; (B) on the concentration and dispersal of pollutants, or their byproducts, through biological, physical, and chemical processes; and (C) on the effects of pollutants on biological community diversity, productivity, and stability, including information on the factors affecting rates of eutrophication and rates of organic and inorganic sedimentation for varying types of receiving waters. *In developing, publishing, and revising criteria under this paragraph after the date of the enactment of this sentence, the Administrator shall consider, among other things, the effects on the ecosystem of (i) water hardness, (ii) pH, (iii) chemical and physical interactions, (iv) persistence of pollutants and the long-term effects of pollutants, (v) sedimentation from chemical reaction of pollutants, (vi) the absorptive properties of sediments, (vii) resuspension, and (viii) bio-uptake. New or revised criteria under this paragraph should be established so as to provide an ample margin of safety to protect human health and fish and wildlife resources. Whenever, in developing new or revised criteria under this paragraph with respect to a pollutant, the Administrator determines that a wellfounded and significant difference of opinion exists as to the latest scientific and research knowledge on the matters referred to in the preceding sentence, the Administrator shall publish a description of such difference of opinion along with the publication of such criteria.*

* * * * * * *

(h) The Administrator shall [, within one hundred and eighty days from the date of enactment of this title,] , *within ninety days from the date of the enactment of the Water Quality Renewal Act of 1985,* promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit application pursuant to section 402 of this Act.

* * * * * * *

(k)(1) The Administrator shall enter into agreements with the Secretary of Agriculture, the Secretary of the Army, and the Secretary of the Interior, and the heads of such other departments, agencies, and instrumentalities of the United States as the Administrator determines, to provide for the maximum utilization of other Federal laws and programs for the purpose of achieving and maintaining water quality through appropriate implementation of plans approved under section 208 *and 319* of this Act.

* * * * * * *

(3) There is authorized to be appropriated to carry out the provisions of this subsection, $100,000,000 per fiscal year for the fiscal years 1979 through [1983.] *1985 and $50,000,000 per fiscal year for the fiscal years 1986 through 1990.*

(l) Individual Control Strategies for Toxic Pollutants.—

(1) State list of navigable waters.—Not later than one year after the date of the enactment of this subsection, each State shall submit to the Administrator for review, approval, and implementation under this subsection—

(A) a list of all navigable waters in such State for which the State does not expect the applicable standard under sec-

tion 303 of the Act will be achieved after the requirements of sections 301(b), 306, and 307(b) are met, due entirely or substantially to discharges from point sources of any toxic pollutants listed pursuant to section 307(a);

(B) for each segment of the navigable waters included on such list, a determination of the specific point sources discharging any such toxic pollutant which is believed to be preventing or impairing such water quality and the amount of each such toxic pollutant discharged by each such source; and

(C) for each such segment, an individual control strategy which the State determines will produce a reduction in the discharge of toxic pollutants from point sources identified by the State under this paragraph through the establishment of effluent limitations under section 302 of this Act and water quality standards under section 303(c)(4)(B) of this Act, which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than three years after the date of the establishment of such strategy.

(2) Approval or disapproval.—Not later than 120 days after the last day of the one-year period referred to in paragraph (1), the Administrator shall approve or disapprove the control strategies submitted under paragraph (1) by any State.

(3) Administrator's list of navigable waters.—If a State fails to submit control strategies in accordance with paragraph (1) or the Administrator does not approve the control strategies submitted by such State in accordance with paragraph (1), then, not later than one year after the last day of the period referred to in paragraph (2), the Administrator, in cooperation with such State and after notice and opportunity for public comment, shall publish in the Federal Register a list of all navigable waters in such State for which the Administrator does not expect the applicable standard under section 303 of this Act will be achieved after the requirements of sections 301(b), 306, and 307(b) are met, due entirely or substantially to discharges from point sources of any toxic pollutants listed pursuant to section 307(a). For each segment of the navigable waters included on such list, the Administrator shall determine the specific point sources discharging any such toxic pollutant which is believed to be preventing or impairing such water quality and the amount of each such toxic pollutant discharged by each such source. At a minimum, the Administrator shall consider for listing under this subsection any navigable waters for which any person submits a petition to the Administrator for listing not later than 120 days after such last day.

(4) Administrator's development and publication.—Not later than one year after the date of publication of the list required by paragraph (3) of this subsection, the Administrator, in cooperation with the States, shall issue proposed regulations setting forth, for each segment of the navigable waters listed under paragraph (3), an individual control strategy. Each individual control strategy shall produce a reduction in the dis-

charge of toxic pollutants from point sources identified by the Administrator under paragraph (3) through the establishment of effluent limitations under section 302 of this Act and water quality standards under section 303(c)(4)(B) of this Act, which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than three years after the date of promulgation of the final strategy. Not later than 180 days after issuing the proposed regulations, the Administrator shall promulgate each individual control strategy as a final regulation.

(5) Implementation.—The Administrator shall implement each individual control strategy established or promulgated under this subsection by modifying or requiring the modification of permits under section 402 of this Act.

* * * * * * *

TOXIC AND PRETREATMENT EFFLUENT STANDARDS

Sec. 307. (a)(1) * * *

* * * * * * *

(e) Compliance Date Extension for Innovative Pretreatment Systems.—In the case of any new or existing facility that proposes to comply with the pretreatment standards of subsection (b) of this section by applying an innovative system that meets the requirements of section 301(k) of this Act, the owner or operator of the publicly owned treatment works receiving the treated effluent from such facility may extend the date for compliance with the applicable pretreatment standard established under this section for a period not to exceed two years—

(1) if the Administrator determines that the innovative system has the potential for industrywide application, and

(2) if the Administrator (or the State, in any case in which the State has a pretreatment program approved by the Administrator)—

(A) determines that the proposed extension will not cause the publicly owned treatment works to be in violation of its permit under section 402, and

(B) concurs with the proposed extension.

* * * * * * *

FEDERAL ENFORCEMENT

Sec. 309. (a)(1) * * *

* * * * * * *

[(c)(1) any person who willfully or negligently violates section 301, 302, 306, 307, or 308 of this Act, or any permit condition or limitation implementing any of such actions in a permit issued under section 402 of this Act by the Administrator or by a State, or in a permit issued under section 404 of this Act by a State, shall be punished by a fine of not less than $2,500 nor more than $25,0000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

[(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

[(3) For the purposes of this subsection, the term "person" shall mean, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.]

(c) Criminal Penalties.—

(1) Negligent violations.—Any person who—

(A) negligently violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army, acting through the Chief of Engineers, or by a State; or

(B) negligently introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage or which causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State;

shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment of not more than two years, or by both.

(2) Knowing violations.—Any person who—

(A) knowingly violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army, acting through the Chief of Engineers, or by a State; or

(B) knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to

cause personal injury or property damage or which causes such treatment works to violate any effluent limitation or condition in a permit issued to the treatment works under section 402 of this Act by the Administrator or a State;

shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $100,000 per day of violation, or by imprisonment of not more than four years, or by both.

(3) Compliance as affirmative defense.—It shall be an affirmative defense under paragraphs (1)(B) and (2)(B) of this subsection that the introduction of any pollutant or hazardous substance into a sewer system or a publicly owned treatment works was in compliance with all applicable Federal, State, and local requirements which govern the introduction of a pollutant or hazardous substance into a sewer or publicly owned treatment works.

(4) False statements.—Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than four years, or by both.

(5) Responsible corporate officer as "person".—For the purpose of this subsection, the term "person" means, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.

(6) Hazardous substance defined.—For the purpose of this subsection, the term "hazardous substance" means (A) any substance designated pursuant to section 311(b)(2)(A) of this Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of this Act, and (E) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.

(d) Any person who violates section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this

Act by the Administrator, or by a State, or in a permit issued under section 404 of this Act by a State, and any person who violates any order issued by the Administrator under subsection (a) of this section, shall be subject to a civil penalty not to exceed [$10,000] *$25,000* per day of such violation.

* * * * * * *

(g) ADMINISTRATIVE PENALTIES.—

(1) IN GENERAL.—Whenever on the basis of any information available to him or her—

(A) the Administrator finds that any person is in violation of section 301 (except as it relates to section 404 of this Act), 302, 306, 307, 318, or 405 of this Act, or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or

(B) the Secretary of the Army, acting through the Chief of Engineers (hereinafter in this subsection referred to as the "Secretary") finds that any person is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 404 of this Act by the Secretary or by a State,

the Administrator or Secretary, as the case may be, may, after consultation with the State in which the violation occurs, assess a civil penalty of not more than $10,000 per day of violation, except that such penalty shall not exceed a total of $125,000.

(2) ADMINISTRATIVE REQUIREMENTS.—

(A) NOTICE AND OPPORTUNITY FOR HEARING.—A civil penalty shall be assessed under this subsection by the Administrator or Secretary, as the case may be, by an order made on the record after opportunity (provided in accordance with this subparagraph) for a hearing in accordance with section 554 of title 5, United States Code. Before issuing such an order, the Administrator or Secretary, as the case may be, shall—

(i) give written notice to the person to be assessed a civil penalty under such order of the Administrator's or Secretary's proposal to issue such order and provide such person an opportunity to request, within 15 days of the date the notice is received by such person, such a hearing on the order; and

(ii) provide public notice of and reasonable opportunity to comment on any proposed assessment.

(B) NOTICE TO INTERESTED PERSONS.—Any person who comments on a proposed assessment shall be given notice of any hearing held under subparagraph (A) and any order assessing a penalty under this subsection. In any such hearing, such person shall have a reasonable opportunity to present evidence.

(C) RIGHTS OF INTERESTED PERSONS TO A HEARING.—If no hearing is held before the issuance of an order assessing a penalty under this subsection, any person who commented on the proposed assessment may petition the Administrator or Secretary, as the case may be, to set aside such order and

to provide a hearing on the penalty. The Administrator or Secretary shall set aside such order and provide such hearing in accordance with subparagraph (A) if the Administrator or Secretary determines that the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order. If the Administrator or Secretary denies a hearing under this subparagraph, the Administraator or Secretary shall provide to the petitioner, and publish in the Federal Register, notice of the reasons for such denial.

(D) FACTORS TO CONSIDER IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a civil penalty, the Administrator or Secretary, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, economic savings (if any) resulting from the violation, and such other matters as justice may require.

(E) COMPROMISE OF AMOUNT.—The Administrator or Secretary, as the case may be, may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

(F) FINALITY OF ORDER.—An order issued under this subsection shall become final 30 days after its issuance unless a petition for judicial review is filed under paragraph (3) or a hearing is requested under subparagraph (C). If such a hearing is denied, such order shall become final 30 days after such denial.

(3) RIGHT OF INTERESTED PERSON TO APPEAL.—Any person who requested in accordance with paragraph (2)(A) or (2)(C) a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

(4) RECOVERY OF UNPAID PENALTIES BY ATTORNEY GENERAL.—If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with paragraph (3), or

(B) after a court in an action brought under paragraph (3) has entered a final judgment in favor of the Administrator or Secretary, as the case may be,

the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 30-day period referred to in paragraph (3) or the date *of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.*

(5) SUBPOENAS.—The Administrator or Secretary, as the case may be, shall have the authority to issue subpoenas in connection with hearings under paragraph (2) of this subsection and may request the Attorney General to bring an action to enforce any subpoena under this subsection. The district courts shall have jurisdiction to enforce such subpoenas and impose sanctions.

(6) EFFECT ON AUTHORITY OF ADMINISTRATOR.—Action taken by the Administrator or Secretary, as the case may be, pursuant to this subsection shall not affect or limit the Administrator's or Secretary's authorized to enforce any provision of this Act, except that any violation with respect to which a civil penalty is imposed under this subsection shall not be subject to a civil penalty under section 309(d) or section 311(b) of this Act.

(7) EFFECT OF STATE ENFORCEMENT ACTION.—When a State has proceeded with an enforcement action relating to a violation with respect to which the Administrator or Secretary is authority to assess a civil penalty under this subsection, the Administrator or Secretary, as the case may be, are not authorized to take any action under this subsection if the State demonstrates that the State imposed penalty is appropriate.

(8) EFFECT OF ADMINISTRATOR'S ACTION ON COMPLIANCE.—No action by the Administrator under this subsection shall affect any person's obligation to comply with any section of this Act or with the terms and conditions of any permit issued pursuant to section 402 or 404 of this Act.

* * * * * * *

OIL AND HAZARDOUS SUBSTANCE LIABILITY

SEC. 311. (a) * * *

(1) * * *

* * * * * * *

(5) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, **[**the Canal Zone,**]** *the Commonwealth of the Northern Mariana Islands,* Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

* * * * * * *

CLEAN LAKES

SEC. 314. (a) Each State shall prepare or establish, and submit to the Administrator for his approval—

(1) an identification and classification according to eutrophic condition of all publicly owned **[**fresh water**]** lakes in such State;

(2) procedures, processes, and methods (including land use requirements), to control sources of pollution of such lakes; and

(3) methods and procedures, in conjunction with appropriate Federal agencies, to restore the quality of such lakes.

(b) The Administrator shall provide financial assistance to States in order to carry out methods and procedures approved by him under *subsection (a) of* this section. The Administrator shall provide financial assistance, to States to prepare the identification and classification surveys required in subsection (a)(1) of this section.

(c)(1) The amount granted to any State for any fiscal year under *subsection (b) of* this section shall not exceed 70 per centum of the funds expended by such State in such year for carrying out approved methods and procedures under *subsection (a) of* this section.

(2) There is authorized to be appropriated $50,000,000 for the fiscal year ending June 30, 1973; $100,000,000 for the fiscal year 1974; $150,000,000 for the fiscal year 1975, $50,000,000 for fiscal year 1977, $60,000,000 for fiscal year 1978, $60,000,000 for fiscal year 1979, $60,000,000 for fiscal year 1980, $30,000,000 for fiscal year 1981, [and $30,000,000 for fiscal year 1982] *$30,000,000 for fiscal year 1982, and $30,000,000 per fiscal year for each of the fiscal years 1983, 1984, 1985, 1986, 1987, 1988, 1989, and 1990* for grants to States under *subsection (b) of* this section which such sums shall remain available until expended. The Administrator shall provide for an equitable distribution of such sums to the States with approved methods and procedures under *subsection (a) of* this section.

(d) PRIORITY PROJECTS FOR CONTROL OF NONPOINT SOURCES.—

(1) GRANT PROGRAM.—The Administrator shall make grants to States for priority projects for control of nonpoint sources of pollution which are contributing to the degradation of water quality in lakes. The Administrator shall provide an equitable distribution of such sums to the States.

(2) FEDERAL SHARE.—The amount granted to a State for a project under this subsection shall not exceed 70 per centum of the cost of such project.

(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection not to exceed $50,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, September 30, 1990. Sums appropriated shall remain available until expended.

(e) ANNUAL WATER QUALITY REPORT.—The Administrator shall submit annually to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the status and trend of water quality in lakes in the United States, including but not limited to, the nature and extent of pollution loading from point and non-point sources and the extent to which the use of lakes is impaired as a result of such pollution with respect to toxic pollution.

* * * * * * *

SEC. 319. NONPOINT SOURCE CONTROL PROGRAMS.

(a) STATE ASSESSMENT REPORTS.—

(1) CONTENTS.—The Governor of each State shall prepare and submit to the Administrator for his approval, a report which—

(A) identifies those portions of the navigable waters within the State which, as a result (in whole or in part) of pollution from nonpoint sources, are not meeting applicable water quality standars or the goals and requirements of this Act;

(B) identifies those categories and subcategories of nonpoint sources which add significant pollution to each portion of the navigable waters identified under subparagraph (A) in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;

(C) identifies and describes State and local programs for controlling pollution added from non-point sources to, and improving the quality of, each such portion of the navigable waters, including but not limited to those programs which are receiving Federal assistance under subsection (i); and

(D) describes the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control each category and subcategory of nonpoint sources identified under subparagraph (B) and to reduce, to the maximum extent practicable, the level of pollution resulting from such category or subcategory.

(2) INFORMATION USED IN PREPARATION.—Each report submitted under paragraph (1) shall be based on available information including, but not limited to, information available under sections 208, 303(e), 304(f), and 305(b) of this Act, and may include all or part of any water quality management program approved under section 208 or 303 of this Act.

(b) STATE PLANS.—

(1) IN GENERAL.—The Governor of each State shall prepare and submit to the Administrator for his approval—

(A) a plan which such State proposes to implement in the first four fiscal years beginning after the date of submission of such plan for controlling pollution added from nonpoint sources to the navigable waters within the State and improving the quality of such waters; and

(B) a report which (i) identifies each department, agency, or instrumentality of the United States and each department, agency, or instrumentality of the State which is likely to be engaging in, supporting, or providing financial assistance in each of such fiscal years for any activity or program in the State which, if carried out, would be inconsistent with implementation of such plan in such fiscal years, and (ii) recommends to the Administrator methods by which such Federal department, agency, or instrumentality could modify administration of such activity or program, and describes methods by which such State department, agency, or instrumentality intends to modify administration of such activity or program, so that such activity or program is consistent with, and assists the State in implementation of, such plan.

(2) Specific contents.—Each plan proposed for implementation under this subsection shall specify—

(A) from among those portions of navigable waters significantly affected by pollution added from nonpoint sources, each portion and land area contributing such pollution with respect to which the State plan to assist, encourage, or require implementation of best management practices and measures in the first four fiscal years beginning after the date of submission of such plan;

(B) the order in which, and the schedule under which, the State plans to assist, encourage, or require implementation of such practices and measures in such fiscal years;

(C) from among those categories and subcategories of nonpoint sources of pollution which contribute to each portion specified under subparagraph (A) not meeting applicable water quality standards or the goals and requirements of this Act, the categories and subcategories with respect to which the State plans to assist, encourage, or require implementation of such practices and measures in such fiscal years and the relative contribution of such pollution by category and subcategory of such sources;

(D) the best management practices and measures the implementation of which the State plans to assist, encourage, or require in each of such fiscal years to reduce pollution resulting from nonpoint sources and to improve water quality;

(E) the methods (including, but not limited to, demonstration, enforcement, technical assistance, education, training, and cost-sharing programs), by category and subcategory of such sources of pollution, which the State plans to use to encourage, assist, or require implementation of such practices and measures in such fiscal years; and

(F) sources of Federal and other assistance (other than assistance provided under subsection (i)) which will be available in each of such fiscal years for supporting implementation of such practices and measures and the purposes for which such assistance will be used in each of such fiscal years.

(3) Certification of legal authority.—Each plan submitted by a State under this subsection shall be accompanied by a certification of the attorney general of the State or the chief attorney of any State water pollution control agency which has independent legal counsel that the laws of the State provide adequate authority to implement such plan or, if there is not such adequate authority, a list of such additional authority which will be necessary to implement such plan.

(4) Implementation schedule.—The schedule required by paragraph (2)(B) shall establish for each category and subcategory of nonpoint sources of pollution specified under paragraph (2)(C) an expeditious time period for implementation of best management practices and measures specified under paragraph (2)(D) and shall indicate the estimated dates for implementation of such practices and measures.

(5) UTILIZATION OF LOCAL AND PRIVATE EXPERTS.—In developing and implementing a plan under this subsection, a State shall, to the maximum extent practicable, utilize local public and private agencies and organizations which have expertise in control of nonpoint sources of pollution.

(6) DEVELOPMENT ON WATERSHED BASIS.—A State shall, to the maximum extent practicable, develop and implement a plan under this subsection on a watershed-by-watershed basis.

(c) ADMINISTRATIVE PROVISIONS.—

(1) COOPERATION REQUIREMENT.—Any report required by subsection (a) and any plan and report required by subsection (b) shall be developed in cooperation with local, regional, and interstate entities which are actively planning for the implementation of nonpoint source pollution controls and have either been certified by the Administrator in accordance with section 208, have worked jointly with the State on water quality management planning under section 205(j), or have been designated by the State legislative body or Governor as water quality management planning agencies for their geographic areas.

(2) TIME PERIOD FOR SUBMISSION OF REPORTS AND PLANS.—Each report and plan shall be submitted to the Administrator during the 270-day period beginning on the date of the enactment of this section; except that upon request of the Governor, the Administrator shall extend such period for not to exceed an additional 270 days.

(3) FAILURE OF STATE TO SUBMIT REPORT.—If a Governor of a State does not submit the report required by subsection (a) during such period, the Administrator shall prepare a report for such State which makes the identifications required by paragraphs (1)(A) and (1)(B) of subsection (a).

(d) CONSOLIDATION OF RECOMMENDATIONS FOR UNITED STATES AGENCIES.—The Administrator shall consolidate recommendations for modifications of activities and programs submitted by the States under subsection (b)(1)(B) and submit such consolidated recommendations to the appropriate departments, agencies, and instrumentalities of the United States. Each such department, agency, or instrumentality, to the maximum extent practicable and consistent with existing law, shall accommodate such recommendations and shall carry out its own activities and programs in a manner which is consistent with, and will assist implementation of, the plan submitted by the State under subsection (b) and approved by the Administrator under this section.

(e) APPROVAL OR DISAPPROVAL OF REPORTS AND PLANS.—

(1) DEADLINE.—Subject to paragraph (2), not later than 180 days after the date of submission to the Administrator of any report or plan under this section (other than subsections (i) and (j)), the Administrator shall either approve or disapprove such report or plan, as the case may be. The Administrator may approve a portion of a plan under this subsection. If the Administrator does not disapprove a report, plan, or portion of a plan in such 180-day period, such report, plan, or portion shall be deemed approved for purposes of this section.

(2) PROCEDURE FOR DISAPPROVAL.—If, after notice and opportunity for public comment and consultation with appropriate

Federal and State agencies and other interested persons, the Administrator determines that a plan submitted under subsection (b) or any portion thereof is not likely to satisfy, in whole or in part, the goals and requirements of this Act, that adequate authority does not exist, or adequate resources are not available, to implement such plan or portion, that the schedule for implementing such plan or portion is not sufficiently expeditious, or that the practices and measures proposed in such plan or portion are not adequate to improve the quality of navigable waters in the State and to reduce the level of pollution in navigable waters in the State resulting from nonpoint sources, the Administrator shall disapprove the plan or portion thereof with respect to which the Administrator makes such determination. The Administrator shall notify the State of such disapproval and request specific revisions of such plan or portion necessary to obtain approval of such plan or portion. Not later than 90 days after the date of such notification, the State shall submit to the Administrator for his approval under this subsection its revisions of such plan or portion.

(f) Local Plans; Technical Assistance.—If a State fails to submit a plan under subsection (b) or the Administrator does not approve such a plan, a local public agency or organization which has expertise in, and authority to, control water pollution resulting from nonpoint sources in any area of such State which the Administrator determines is of sufficient geographic size may, with approval of such State, request the Administrator to provide, and the Administrator shall provide, technical assistance to such agency or organization in developing for such area a plan which is described in subsection (b) and meets the requirements of subsection (e). After development of such plan, such agency or organization shall submit such plan to the Administrator for his approval. If the Administrator approves such plan, such agency or organization shall be eligible to receive financial assistance under subsection (i) for implementation of such plan as if such agency or organization were a State for which a report submitted under subsection (a) and a plan submitted under subsection (b) were approved under this section. Such financial assistance shall be be subject to the same terms and conditions as assistance provided to a State under subsection (i).

(g) Technical Assistance for States.—Upon request of a State, the Administrator may provide technical assistance to such State in developing a plan under subsection (b) for those portions of the navigable waters requested by such State.

(h) Interstate Management Conference.—

(1) Convening of conference; notification; purpose.—If any portion of the navigable waters in any State which is implementing a plan approved under this section is not meeting applicable water quality standards or the goals and requirments of this Act as a result, in whole or part, of pollution from nonpoint sources in another State, such State may petiton the Administrator to convene, and the Administrator shall convene, a management conference of all States which contribute pollution resulting from nonpoint sources to such portion. If, on the basis of information available to him, the Administrator determines that a State is not meeting applicable water quality

standards or the goals and requirements of this Act as a result, in whole or part, of pollution from nonpoint sources in another State, the Administrator shall notify such States. The Administrator may convene a management conference under this paragraph not later than 180 days after giving such notification, whether or not the State which is not meeting such standards requests such conference. The purpose of such conference shall be to develop an agreement among such States to reduce the level of pollution in such portion resulting from nonpoint sources and to improve the water quality of such portion.

(2) STATE PLAN REQUIREMENT.—Each State which contributes significant pollution from nonpoint sources to the portion of navigable waters in amounts which contribute to such portion not meeting applicable water quality standards or the goals and requirements of this Act shall submit to the Administrator for his approval a plan referred to in subsection (b) to reduce the level of pollution in such portion resulting from nonpoint sources in such State and to improve the quality of such portion; except that if such State has an approved plan under subsection (b), such State shall revise such plan to reduce the level of pollution in such portion resulting from nonpoint sources in such State and to improve the water quality of such portion and submit such revised plan to the Administrator for his approval under this section. Such plan or revised plan shall be consistent with existing Federal and State law. After approval, the State shall implement such plan or revised plan.

(i) GRANT PROGRAM.—

(1) GRANTS FOR IMPLEMENTATION OF PLANS.—Upon application of a State for which a report submitted under subsection (a) and a plan submitted under subsection (b) is approved under this section, the Administrator shall make grants under this subsection to such State for the purpose of assisting the State in implementing such plan.

(2) APPLICATIONS.—An application for a grant under this subsection in any fiscal year shall be in such form and shall contain such other information as the Administrator may require, including an identification and description of the best management practices, and measures which the State proposes to assist, encourage, or require in such year with the Federal assistance to be provided under the grant.

(3) FEDERAL SHARE.—

(A) IN GENERAL.—The Federal share of the cost of each plan implemented with Federal assistance under this subsection in any fiscal year shall not exceed 50 percent of the cost incurred by the State in implementing such plan.

(B) EXCEPTION.—The Federal share of those costs of any such plan which are attributable to a watershed area with respect to which the Administrator determines that a significant number of non-Federal, non-State interests of such area are willing and able to enter into agreements to participate in such year in nonpoint source pollution control measures under such plan shall be not less than 50 percent and not more than 60 percent of such cost.

(C) LIMITATION ON ADMINISTRATIVE COSTS.—For purposes of this paragraph, administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against activities and programs carried out with a grant under this subsection shall not exceed in any fiscal year 10 percent of the amount of the grant in such year, except that costs of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects and technology transfer programs shall not be subject to this limitation.

(4) MAINTENANCE OF EFFORT.—No grant may be made to a State under this subsection in any fiscal year unless such State enters into such agreements with the Administrator as the Administrator may require to ensure that such State will maintain its aggregate expenditures from all other sources for programs for controlling pollution added to the navigable waters in such State from nonpoint sources and improving the quality of such waters at or above the average level of such expenditures in its two fiscal years preceding the date of enactment of this subsection.

(5) REPORTING AND REQUIREMENTS.—

(A) REPORT.—Each State which receives a grant under this subsection in any fiscal year shall submit to the Administrator a written report which describes the activities and programs carried out in the State under such grant and the progress made by such State in meeting the schedule specified under subsection (b)(2)(B).

(B) SATISFACTORY PROGRESS.—No grant may be made under this subsection in any fiscal year to a State which in the preceding fiscal year received a grant under this subsection unless the Administrator determines that such State made satisfactory progress in such preceding fiscal year in meeting the schedule specified by such State under subsection (b)(2)(B).

(6) LIMITATION ON GRANT AMOUNTS.—Notwithstanding any other provision of this subsection, not more than 15 percent of the amount appropriated to carry out this subsection may be used to make grants to any State, including any grants to any local public agency or organization with authority to control pollution from nonpoint sources in any area of such State.

(7) PRIORITY FOR EFFECTIVE REGULATORY MECHANISMS.—For each fiscal year beginning after September 30, 1987, the Administrator may give priority in making grants under this subsection, and shall give consideration is determining the Federal share of any such grant, to any State which has included effective regulatory mechanisms in an approved State plan under this section and has implemented such mechanisms in the preceding fiscal year. Such mechanisms shall include, but are not limited to, deadlines for implementation of best management practices and enforcement procedures to ensure implementation of such plan.

(8) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection not to exceed $150,000,000 per fiscal year for the fiscal years ending Septem-

ber 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, September 30, 1990. Sums appropriated to carry out this subsection shall remain available until expended.

(j) REPORTS OF ADMINISTRATOR.—

(1) ANNUAL REPORTS.—Not later than January 1, 1986, and each January 1 thereafter the Administrator shall transmit to the Committee on Public Works and Transportation of the House of Representatives and Committee on Environment and Public Works of the Senate report for the preceding fiscal year on the activities and programs implemented under this section and the progress made in reducing pollution in the navigable waters resulting from nonpoint sources and improving the quality of such waters.

(2) FINAL REPORT.—Not later than January 1, 1989, the Administrator shall transmit to Congress a final report on the activities carried out under this section. Such report, at a minimum, shall include—

(A) an analysis of the effectiveness of plans carried out under this section and of the best management practices and measures utilized under those plans in controlling nonpoint sources of pollution;

(B) an analysis of the level of State participation in implementing such plans; and

(C) recommendations of the Administrator concerning future programs (including enforcement programs) for controlling pollution from nonpoint sources.

(k) SET ASIDE FOR ADMINISTRATIVE PERSONNEL.—Not less than 5 perecent of the funds appropriated to carry out subsection (i) for any fiscal year shall be available to the Administrator to maintain personnel levels at the Environmental Protection Agency at levels which are adequate to carry out this section in such year.

TITLE IV—PERMITS AND LICENSES

* * * * * * *

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

SEC. 402. (a)(1) * * *

* * * * * * *

(b) At any time after the promulgation of the guidelines required by subsection (h)(2) of section 304 of this Act, the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement form the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or form the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as te case may be, provide adequate authority to carry out the described program. The Administrator shall approve each such submitted program unless he determines that adequate authority does not exist:

(1) To issue permits which—

(A) apply, and insure compliance with, any applicable requirements of sections 301, 302, 306, 307, and 403;

[(B) are for fixed terms not exceeding five years; and]

(B) are for fixed terms not exceeding five years, or for a fixed term not exceedig ten years in any case in which the State determines (in accordance with guidelines established by the Administrator) that the applicant has consistently complied with any permit held by such applicant under this section and that—

(i) pollutants described in subparagraphs (C), (D), and (F) of section 301(b)(2) are not detectable in the effluent to which the permit will apply; or

(ii) such pollutants are present in such effluent only in trace amounts and are neither causing nor are likely to cause toxic effects, alone or in combination with pollutants from other sources;

(C) can be terminated or modified for cause including, but not limited to, the following:

(i) violation of any condition of the permit;

(ii) obtaining a permit by mirepresentation, or failure to disclose fully all relevant facts;

(iii) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;

(D) in the case of any permit issued for a fixed term exceeding five years, must be modified promptly to ensure compliance with any new or revised effluent limitation under section 307(a) of this Act or any new or revised requirement pursuant to a standard under section 303 of this Act which limitation or requirement is more stringent than the existing effluent limitation or requirement in the permit or which controls a pollutant not controlled in the permit; and

[(D)] *(E)* control the disposal of pollutants into wells;

* * * * * * *

(c)(1) Not later than ninety days after the date on which a State has submitted a program (or revision thereof) pursuant to subsection (b) of this section, the Administrator shall suspend the issuance of permits under subsection (a) of this section as to those [navigable waters] *discharges* subject to such program unless he determines that the State permit program does not meet the requirements of subsection (b) of this section or does not conform to the guidelines issued under section 304(i)(2) of this Act. If the Administrator so determines, he shall notify the State of any revisions or modifications necessary to conform to such requirements or guidelines.

* * * * * * *

(4) A State may return administration of its permit program to the Administrator, and the Administrator may withdraw approval of a State program under paragraph (3) of this subsection—

(A) in the case of any approval under subsection (n)(3), the entire program being administered by the State department or agency at the time of such return or withdrawal, as the case may be; or

(B) in the case of any approval under subsection (n)(4), any phased component of the permit program approved at the time of such return or withdrawal, as the case may be.

* * * * * * *

(i)*(1)* The Administrator shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture, nor shall the Administrator directly or indirectly, require any State to require such a permit.

(2) The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require such a permit, for discharges of stormwater runoff from mining operations or oil or gas exploration, production, processing, or treatment operations, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated with process wastes, overburden, raw materials, toxic pollutants above natural background levels, spilled product, hazardous substances, or oil or grease. Any person discharging stormwater runoff described in the preceding sentence shall monitor the quality of water in such flows and shall report not less often than annually to the Administrator on the results of such monitoring.

(m) Additional Pretreatment of Covnentional Pollutants Not Required.—To the extent a treatment works (as defined in section 212 of this Act) which is publicly owned is not meeting the requirements of a permit issued under this section for such treatment works as a result of inadequate design or operation of such treatment works, the Administrator, in issuing a permit under this section, shall not require pretreatment by a person introducing conventional pollutants identified pursuant to section 304(a)(4) of this Act into such treatment works other than pretreatment required to assure compliance with pretreatment standards under subsection (b)(8) of this section and section 307(b)(1) of this Act. Nothing in this subsection shall affect the Administrator's authority under sections 307 and 309 of this Act, affect State and local authority under sections 307(b)(4) and 510 of this Act, relieve such treatment works of its obligations to meet requirements established under this Act, or otherwise preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.

(n) Partial Permit Program.—

(1) State submission.—The Governor of a State may submit under subsection (b) of this section a permit program for a portion of the discharges into the navigable waters in such State.

(2) Minimum coverage.—A partial permit program under this subsection shall cover at a minimum administration of a

major category of the discharges into the navigable waters of the State or a major component of the permit program required by subsection (b).

(3) APPROVAL OF PARTIAL PERMIT PROGRAM.—The Administrator may approve a partial permit program covering administration of a major category of discharges under this subsection if—

(A) such program represents a complete permit program and covers all of the discharges under the jurisdiction of a department or agency of the State; and

(B) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b).

(4) APPROVAL OF PARTIAL AND PHASED PERMIT PROGRAM.—The Administrator may approve under this subsection a partial and phased permit program covering administration of a major component (including discharge categories) of a State permit program required by subsection (b) if—

(A) the Administrator determines that the partial program represents a significant and indentifiable part of the State program required by subsection (b); and

(B) the State submits, and the Administrator approves, a plan for the State to assume administration by phases of the remainder of the State program required by subsection (b) by a specified date not more than five years after submission of the partial program under this subsection and agrees to make all reasonable efforts to assume such administration by such date.

* * * * * * *

TITLE V—GENERAL PROVISIONS

ADMINISTRATION

SEC. 501. (a) * * *

* * * * * * *

(d) The Administrator and the Comptroller General of the United States, or any of their duty authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this Act. *For the purpose of carrying out audits and examinations with respect to recipients of Federal assistance under this Act, the Administrator is authorized to enter into noncompetitive procurement contracts with State audit organizations. Such contracts may only be entered into to the extent and in such amounts as may be provided in advance in appropriation Acts.*

* * * * * * *

GENERAL DEFINITIONS

SEC. 502. Except as otherwise specifically provided, when used in this Act:

(1) * * *

* * * * * * *

(3) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, The Virgin Islands, Guam, American Samoa, *the Commonwealth of the Northern Mariana Islands,* and the Trust Territory of the Pacific Islands.

* * * * * * *

(14) The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include *agricultural stormwater discharges and* return flows from irrigated agriculture.

* * * * * * *

CITIZEN SUITS

SEC. 505. (a) * * *

(b) No action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to sixty days after the plaintiff has given notice of the alleged violation (i) to the Administrator, (ii) to the State in which the alleged violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States, or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any citizen may intervene as a matter of right**[**.**]**, *or*

(C) if the Administrator or State has commenced and is diligently pursuing the assessment of a civil penalty under section 309(g) of this Act.

* * * * * * *

ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

SEC. 509. (a)(1) * * *

* * * * * * *

(b)(1) Review of the Administrator's action (A) in promulgating any standard of performance under section 306, (B) in making any determination pursuant to section 306(b)(1)(C), (C) in promulgating any effluent standard, prohibition, or pretreatment standard under section 307, (D) in making any determination as to a State permit program submitted under section 402(b), (E) in approving or promulgating any effluent limitation or other limitation under sections 301, 302, or 306 **[**and**]** (F) in issuing or denying any permit under section 402, *and (G) in promulgating any individual control strategy under section 304(l),* may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person resides or transacts such business upon application by such person. Any such application shall be made within ninety days from the date of such determination, approval, promulgation, issuance or denial, or after such date only if such application is based solely on grounds which arose after such ninetieth day.

* * * * * * *

REPORTS TO CONGRESS

SEC. 516. (a) * * *

* * * * * * *

(f) DAM DISCHARGE STUDY.—The Administrator, in cooperation with interested States and Federal agencies, shall study and monitor the effects on the quality of navigable waters attributable to the impoundment and discharge of water by dams. The results of such study, together with any recommendations for the control of such impoundment and discharge, shall be submitted to Congress not later than December 31, 1986.

(g) STATE REVOLVING FUND REPORT.—

(1) IN GENERAL.—Not later than February 10, 1990, the Administrator shall submit to Congress a report on the financial status and operations of Water Pollution Control Revolving Funds established by the States under section 220 of this Act. The Administrator shall prepare such report in cooperation with the States, including water pollution control agencies and other water pollution control planning and financing agencies.

(2) CONTENTS.—The report under this subsection shall also include the following:

(A) an inventory of the facilities that are in significant noncompliance with the enforceable requirements of this Act;

(B) an estimate of the cost of construction necessary to bring such facilities into compliance with such requirements;

(C) an assessment of the availability of sources of funds for financing such needed construction, including an estimate of the amount of funds available for providing assistance for such construction through September 30, 1999, from the Water Pollution Control Revolving Funds established by the States under section 220 of this Act;

(D) an assessment of the operations, loan portfolio, and loan conditions of such Funds;

(E) an assessment of the effect on user charges of the assistance provided by such Funds compared to the assistance provided with funds appropriated pursuant to section 207 of this Act; and

(F) an assessment of the efficiency of the operation and maintenance of treatment works constructed with assistance provided by such Funds compared to the efficiency of the operation and maintenance of treatment works constructed with assistance provided under section 201 of this Act.

GENERAL AUTHORIZATION

SEC. 517. There are authorized to be appropriated to carry out this Act, other than sections 104, 105, 106(a), 107, 108, 112, 113, 114, 115, 206, 207, 208 (f) and (h), 209, 304, 311 (c), (d) (i), (l) and (k), 314, 315, and 317, $250,000,000 for the fiscal year ending June 30, 1973, $300,000,000 for the fiscal year ending June 30, 1974, $350,000,000 for the fiscal year ending June 30, 1975, $100,000,000 for the fiscal year ending September 30, 1977, $150,000,000 for the fiscal year ending September 30, 1978, $150,000,000 for the fiscal year ending September 30, 1979, $150,000,000 for the fiscal year ending September 30, 1980, $150,000,000 for the fiscal year ending September 30, 1981, [and $161,000,000 for the fiscal year ending September 30, 1982] *$161,000,000 for the fiscal year ending September 30, 1982, $160,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, and September 30, 1985, and $110,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990.*

* * * * * * *

IA

Union Calendar No. 130

99th CONGRESS
1st Session

H. R. 8

[Report No. 99–189]

To amend the Federal Water Pollution Control Act to provide for the renewal of the quality of the Nation's waters, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

January 3, 1985

Mr. Howard (for himself, Mr. Anderson, Mr. Roe, Mr. Snyder, and Mr. Stangeland) introduced the following bill; which was referred to the Committee on Public Works and Transportation

July 2, 1985

Additional sponsors: Mrs. Johnson, Mr. McKinney, Mr. Hoyer, Mr. Schumer, Mr. Bennett, Mr. Boehlert, Mr. Boucher, Mr. Gallo, Mr. Moody, Mr. Visclosky, Mr. Atkins, Mr. Lightfoot, Mr. Perkins, Mr. Gray of Illinois, Mr. Wise, Mr. de Lugo, Mr. Rowland of Georgia, Mr. Borski, Mr. Valentine, Mr. Molinari, Mr. Bosco, Mr. Shaw, Mr. Rahall, Mr. Lipinski, Mr. Hammerschmidt, Mr. Kolter, Mr. Sunia, Mr. Towns, Mr. Traficant, Mr. Young of Missouri, Mr. Nowak, Mr. McEwen, Mr. Sundquist, Mr. Packard, Mrs. Bentley, Mr. Callahan, Mr. Gingrich, Mr. Clinger, Mr. Breaux, Mr. Shuster, Mr. Savage, Mr. Oberstar, Mrs. Long, Mr. Edgar, and Mr. Mineta

July 2, 1985

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on January 3, 1985]

A BILL

To amend the Federal Water Pollution Control Act to provide for the renewal of the quality of the Nation's waters, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS; AMENDMENTS TO FEDERAL WATER POLLUTION CONTROL ACT; DEFINITION OF ADMINISTRATOR.

(a) SHORT TITLE.—This Act may be cited as the "Water Quality Renewal Act of 1985".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents; amendments to Federal Water Pollution Control Act; definition of Administrator.
Sec. 2. Authorizations of appropriations.
Sec. 3. Authorizations for construction grants.
Sec. 4. Compliance deadlines.
Sec. 5. Individual control strategies for toxic pollutants.
Sec. 6. Policy for control of nonpoint sources of pollution.
Sec. 7. Control of nonpoint sources of pollution.
Sec. 8. Lake restoration guidance manual.
Sec. 9. Small flows clearinghouse.
Sec. 10. Eligible categories of projects.
Sec. 11. Time limit on resolving certain disputes.
Sec. 12. Federal share.
Sec. 13. Agreement on eligible costs; grantee certification of treatment process; turnkey contracts.
Sec. 14. Grant conditions; user charges on low-income residential users.
Sec. 15. Allotment of construction grant funds.
Sec. 16. Grants to States for establishment of water pollution control revolving funds.
Sec. 17. Innovative technology compliance deadlines for direct dischargers.
Sec. 18. Variances from the application of effluent limitations.
Sec. 19. Water quality criteria.
Sec. 20. Test procedures.
Sec. 21. Pretreatment standards.
Sec. 22. Criminal penalties.
Sec. 23. Civil penalties.
Sec. 24. Administrative penalties.
Sec. 25. Clean lakes.
Sec. 26. NPDES permits.

Sec. 27. Audits.
Sec. 28. Commonwealth of the Northern Mariana Islands.
Sec. 29. Agricultural stormwater discharges.
Sec. 30. Reports to Congress.
Sec. 31. Newtown Creek, New York.
Sec. 32. San Diego, California.
Sec. 33. Naco, Arizona.
Sec. 34. Limitation on discharge of raw sewage by New York City.
Sec. 35. Deer Island treatment plant, Massachusetts.
Sec. 36. Oakwood Beach and Red Hook projects, New York.
Sec. 37. Chippewa Township, Pennsylvania.
Sec. 38. Des Moines, Iowa.
Sec. 39. Wastewater reclamation demonstration.
Sec. 40. Boston Harbor and adjacent waters.
Sec. 41. Treatment works in Washington State.
Sec. 42. Improvement projects.
Sec. 43. Study of regulation of de minimis discharges.
Sec. 44. Study of effectiveness of innovative and alternative processes and techniques.
Sec. 45. Water quality improvement study.
Sec. 46. Study of testing procedures.
Sec. 47. Study of pretreatment of toxic pollutants.
Sec. 48. Sulfide corrosion study.
Sec. 49. Pulp mill study.
Sec. 50. Study of rainfall induced infiltration into sewer systems.
Sec. 51. Study of pH in discharges from mining operations.
Sec. 52. Study of pollution in Lake Pend Oreille, Idaho.
Sec. 53. Limitation on payments.

(c) AMENDMENT OF FEDERAL WATER POLLUTION CONTROL ACT.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Water Pollution Control Act.

(d) DEFINITION.—For purposes of this Act, the term "Administrator" means the Administrator of the Environmental Protection Agency.

SEC. 2. AUTHORIZATIONS OF APPROPRIATIONS.

(a) RESEARCH AND INVESTIGATIONS.—Section 104(u) is amended—

(1) in clause (1) by inserting after "September 30, 1982," the following: "and not to exceed $22,770,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990,";

(2) in clause (2) by striking out "and $3,000,000 for fiscal year 1982," and inserting in lieu thereof the following: "$3,000,000 for fiscal year 1982, and $3,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990,"; and

(3) in clause (3) by striking out "and $1,500,000 for fiscal year 1982," and inserting in lieu thereof the following: "$1,500,000 for fiscal year 1982, and $1,500,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990,".

(b) GRANTS FOR PROGRAM ADMINISTRATION.—Section 106(a)(2) is amended by inserting after "1982" a comma and the following: "and $75,000,000 per fiscal year for each of the fiscal years 1983, 1984, 1985, 1986, 1987, 1988, 1989, and 1990".

(c) TRAINING GRANTS AND SCHOLARSHIPS.—Section 112(c) is amended by striking out "and $7,000,000 for the fiscal year ending September 30, 1982," and inserting in lieu thereof the following: "$7,000,000 for the fiscal year ending September 30, 1982, and $7,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990,".

(d) AREAWIDE PLANNING.—Section 208(f)(3) is amended by striking out "and" after "1974," and after "1980," and by inserting after "1982" the following: ", not to exceed $100,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, and September 30, 1985, and not to exceed $50,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990".

(e) RURAL CLEAN WATER.—Section 208(j)(9) is amended by striking out "and" after "1981," and by insert-

ing after "1982," the following: "$100,000,000 per fisca year for each of the fiscal years ending September 30, 1983, September 30, 1984, and September 30, 1985, and $50,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990,".

(f) INTERAGENCY AGREEMENTS.—Section 304(k)(3) is amended by striking out "1983" and inserting in lieu thereof "1985 and $50,000,000 per fiscal year for the fiscal years 1986 through 1990".

(g) CLEAN LAKES.—Section 314(c)(2) is amended by striking out "and $30,000,000 for fiscal year 1982" and inserting in lieu thereof the following: "$30,000,000 for fiscal year 1982, and $30,000,000 per fiscal year for each of the fiscal years 1983, 1984, 1985, 1986, 1987, 1988, 1989, and 1990".

(h) GENERAL AUTHORIZATION.—Section 517 is amended by striking out "and $161,000,000 for the fiscal year ending September 30, 1982" and inserting in lieu thereof "$161,000,000 for the fiscal year ending September 30, 1982, $160,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, and September 30, 1985, and $110,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, Septem-

ber 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990".

SEC. 3. AUTHORIZATIONS FOR CONSTRUCTION GRANTS.

Section 207 is amended by striking out "and September 30, 1985," and inserting in lieu thereof "September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990,".

SEC. 4. COMPLIANCE DEADLINES.

(a) Priority Toxic Pollutants.—Section 301(b)(2)(C) is amended to read as follows:

> *"(C) for all toxic pollutants referred to in table 1 of Committee Print Numbered 95–30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established;".*

(b) Other Toxic Pollutants.—Section 301(b)(2)(D) is amended by striking out "not later than three years after the date such limitations are established" and inserting in lieu thereof "as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established".

(c) CONVENTIONAL POLLUTANTS.—Section 301(b)(2)(E) is amended to read as follows:

"(E) for all pollutants identified pursuant to section 304(a)(4) of this Act compliance with effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which shall require application of the best conventional pollutant control technology, as determined in accordance with regulations issued by the Administrator pursuant to section 304(a)(4) of this Act, as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established;".

(d) OTHER POLLUTANTS.—Section 301(b)(2)(F) is amended to read as follows:

"(F) for all pollutants (other than those subject to subparagraph (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established.".

(e) DEADLINES FOR REGULATIONS FOR CERTAIN TOXIC POLLUTANTS.—The Administrator shall promulgate final regulations establishing effluent limitations in accord-

ance with sections 301(b)(2)(A) and 307(b)(1) of the Federal Water Pollution Control Act for all toxic pollutants referred to in table 1 of Committee Print Numbered 95–30 of the Committee on Public Works and Transportation of the House of Representatives which are discharged from the categories of point sources in accordance with the following table:

Category	*Date by which the final regulation shall be promulgated*
Foundries	*June 30, 1985.*
Nonferrous metals forming	*June 30, 1985.*
Organic chemicals and plastics and synthetic fibers	*March 31, 1986.*
Pesticides	*August 31, 1985.*
Nonferrous metals (phase II)	*July 31, 1985.*

SEC. 5. INDIVIDUAL CONTROL STRATEGIES FOR TOXIC POLLUTANTS.

(a) IN GENERAL.—Section 304 is amended by adding at the end thereof the following new subsection:

“[illegible]) INDIVIDUAL CONTROL STRATEGIES FOR TOXIC POLLUTANTS.—

“(1) STATE LIST OF NAVIGABLE WATERS.—Not later than one year after the date of the enactment of this subsection, each State shall submit to the Administrator for review, approval, and implementation under this subsection—

“(A) a list of all navigable waters in such State for which the State does not expect the applicable standard under section 303 of this Act

will be achieved after the requirements of sections 301(b), 306, and 307(b) are met, due entirely or substantially to discharges from point sources of any toxic pollutants listed pursuant to section 307(a);

"(B) for each segment of the navigable waters included on such list, a determination of the specific point sources discharging any such toxic pollutant which is believed to be preventing or impairing such water quality and the amount of each such toxic pollutant discharged by each such source; and

"(C) for each such segment, an individual control strategy which the State determines will produce a reduction in the discharge of toxic pollutants from point sources identified by the State under this paragraph through the establishment of effluent limitations under section 302 of this Act and water quality standards under section 303(c)(4)(B) of this Act, which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than three years after the date of the establishment of such strategy.

"(2) APPROVAL OR DISAPPROVAL.—Not later than 120 days after the last day of the one-year period referred to in paragraph (1), the Administrator shall approve or disapprove the control strategies submitted under paragraph (1) by any State.

"(3) ADMINISTRATOR'S LIST OF NAVIGABLE WATERS.—If a State fails to submit control strategies in accordance with paragraph (1) or the Administrator does not approve the control strategies submitted by such State in accordance with paragraph (1), then, not later than one year after the last day of the period referred to in paragraph (2), the Administrator, in cooperation with such State and after notice and opportunity for public comment, shall publish in the Federal Register a list of all navigable waters in such State for which the Administrator does not expect the applicable standard under section 303 of this Act will be achieved after the requirements of sections 301(b), 306, and 307(b) are met, due entirely or substantially to discharges from point sources of any toxic pollutants listed pursuant to section 307(a). For each segment of the navigable waters included on such list, the Administrator shall determine the specific point sources discharging any such toxic pollutant which is believed to be preventing or impairing such water quality and the

amount of each such toxic pollutant discharged by each such source. At a minimum, the Administrator shall consider for listing under this subsection any navigable waters for which any person submits a petition to the Administrator for listing not later than 120 days after such last day.

"*(4) ADMINISTRATOR'S DEVELOPMENT AND PUBLICATION.—Not later than one year after the date of publication of the list required by paragraph (3) of this subsection, the Administrator, in cooperation with the States, shall issue proposed regulations setting forth, for each segment of the navigable waters listed under paragraph (3), an individual control strategy. Each individual control strategy shall produce a reduction in the discharge of toxic pollutants from point sources identified by the Administrator under paragraph (3) through the establishment of effluent limitations under section 302 of this Act and water quality standards under section 303(c)(4)(B) of this Act, which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than three years after the date of promulgation of the final strategy. Not later than 180 days after issuing the proposed regulations,* *the Administrator shall promulgate each individual control strategy as a final regulation.*

"(5) IMPLEMENTATION.—The Administrator shall implement each individual control strategy established or promulgated under this subsection by modifying or requiring the modification of permits under section 402 of this Act.".

(b) JUDICIAL REVIEW.—Section 509(b)(1) is amended by striking out "and (F)" and inserting in lieu thereof "(F)" and by inserting after "any permit under section 402," the following: "and (G) in promulgating any individual control strategy under section 304(l),".

SEC. 6. POLICY FOR CONTROL OF NONPOINT SOURCES OF POLLUTION.

Section 101(a) is amended by striking out "and" at the end of paragraph (5), by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and", and by adding at the end thereof the following:

"(7) it is the national policy that plans for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this Act to be met through the control of both point and nonpoint sources of pollution.".

SEC. 7. CONTROL OF NONPOINT SOURCES OF POLLUTION.

(a) In General.—Title III is amended by adding at the end the following new section:

"SEC. 319. NONPOINT SOURCE CONTROL PROGRAMS.

"(a) State Assessment Reports.—

"(1) Contents.—The Governor of each State shall prepare and submit to the Administrator for his approval, a report which—

"(A) identifies those portions of the navigable waters within the State which, as a result (in whole or in part) of pollution from nonpoint sources, are not meeting applicable water quality standards or the goals and requirements of this Act;

"(B) identifies those categories and subcategories of nonpoint sources which add significant pollution to each portion of the navigable waters identified under subparagraph (A) in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;

"(C) identifies and describes State and local programs for controlling pollution added from nonpoint sources to, and improving the quality of, each such portion of the navigable waters, including but not limited to those programs which are

receiving Federal assistance under subsection (i); and

"(D) describes the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control each category and subcategory of nonpoint sources identified under subparagraph (B) and to reduce, to the maximum extent practicable, the level of pollution resulting from such category or subcategory.

"(2) INFORMATION USED IN PREPARATION.—Each report submitted under paragraph (1) shall be based on available information including, but not limited to, information available under sections 208, 303(e), 304(f), and 305(b) of this Act, and may include all or part of any water quality management program approved under section 208 or 303 of this Act.

"(b) STATE PLANS.—

"(1) IN GENERAL.—The Governor of each State shall prepare and submit to the Administrator for his approval—

"(A) a plan which such State proposes to implement in the first four fiscal years beginning after the date of submission of such plan for controlling pollution added from nonpoint sources to

the navigable waters within the State and improving the quality of such waters; and

"(B) a report which (i) identifies each department, agency, or instrumentality of the United States and each department, agency, or instrumentality of the State which is likely to be engaging in, supporting, or providing financial assistance in each of such fiscal years for any activity or program in the State which, if carried out, would be inconsistent with implementation of such plan in such fiscal years, and (ii) recommends to the Administrator methods by which such Federal department, agency, or instrumentality could modify administration of such activity or program, and describes methods by which such State department, agency, or instrumentality intends to modify administration of such activity or program, so that such activity or program is consistent with, and assists the State in implementation of, such plan.

"(2) SPECIFIC CONTENTS.—Each plan proposed for implementation under this subsection shall specify—

"(A) from among those portions of navigable waters significantly affected by pollution added

from nonpoint sources, each portion and land area contributing such pollution with respect to which the State plans to assist, encourage, or require implementation of best management practices and measures in the first four fiscal years beginning after the date of submission of such plan;

"(B) the order in which, and the schedule under which, the State plans to assist, encourage, or require implementation of such practices and measures in such fiscal years;

"(C) from among those categories and subcategories of nonpoint sources of pollution which contribute to each portion specified under subparagraph (A) not meeting applicable water quality standards or the goals and requirements of this Act, the categories and subcategories with respect to which the State plans to assist, encourage, or require implementation of such practices and measures in such fiscal years and the relative contribution of such pollution by category and subcategory of such sources;

"(D) the best management practices and measures the implementation of which the State plans to assist, encourage, or require in each of such fiscal years to reduce pollution resulting

from nonpoint sources and to improve water quality;

"(E) the methods (including, but not limited to, demonstration, enforcement, technical assistance, education, training, and cost-sharing programs), by category and subcategory of such sources of pollution, which the State plans to use to encourage, assist, or require implementation of such practices and measures in such fiscal years; and

"(F) sources of Federal and other assistance (other than assistance provided under subsection (i)) which will be available in each of such fiscal years for supporting implementation of such practices and measures and the purposes for which such assistance will be used in each of such fiscal years.

"(3) CERTIFICATION OF LEGAL AUTHORITY.—Each plan submitted by a State under this subsection shall be accompanied by a certification of the attorney general of the State or the chief attorney of any State water pollution control agency which has independent legal counsel that the laws of the State provide adequate authority to implement such plan or, if there is not such adequate authority, a list of such additional

authority which will be necessary to implement such plan.

"(4) IMPLEMENTATION SCHEDULE.—The schedule required by paragraph (2)(B) shall establish for each category and subcategory of nonpoint sources of pollution specified under paragraph (2)(C) an expeditious time period for implementation of best management practices and measures specified under paragraph (2)(D) and shall indicate the estimated dates for implementation of such practices and measures.

"(5) UTILIZATION OF LOCAL AND PRIVATE EXPERTS.—In developing and implementing a plan under this subsection, a State shall, to the maximum extent practicable, utilize local public and private agencies and organizations which have expertise in control of nonpoint sources of pollution.

"(6) DEVELOPMENT ON WATERSHED BASIS.—A State shall, to the maximum extent practicable, develop and implement a plan under this subsection on a watershed-by-watershed basis.

"(c) ADMINISTRATIVE PROVISIONS.—

"(1) COOPERATION REQUIREMENT.—Any report required by subsection (a) and any plan and report required by subsection (b) shall be developed in cooperation with local, regional, and interstate entities which

are actively planning for the implementation of nonpoint source pollution controls and have either been certified by the Administrator in accordance with section 208, have worked jointly with the State on water quality management planning under section 205(j), or have been designated by the State legislative body or Governor as water quality management planning agencies for their geographic areas.

"(2) TIME PERIOD FOR SUBMISSION OF REPORTS AND PLANS.—Each report and plan shall be submitted to the Administrator during the 270-day period beginning on the date of the enactment of this section; except that upon request of the Governor, the Administrator shall extend such period for not to exceed an additional 270 days.

"(3) FAILURE OF STATE TO SUBMIT REPORT.—If a Governor of a State does not submit the report required by subsection (a) during such period, the Administrator shall prepare a report for such State which makes the identifications required by paragraphs (1)(A) and (1)(B) of subsection (a).

"(d) CONSOLIDATION OF RECOMMENDATIONS FOR UNITED STATES AGENCIES.—The Administrator shall consolidate recommendations for modifications of activities and programs submitted by the States under subsection (b)(1)(B)

and submit such consolidated recommendations to the appropriate departments, agencies, and instrumentalities of the United States. Each such department, agency, or instrumentality, to the maximum extent practicable and consistent with existing law, shall accommodate such recommendations and shall carry out its own activities and programs in a manner which is consistent with, and will assist implementation of, the plan submitted by the State under subsection (b) and approved by the Administrator under this section.

"(e) APPROVAL OR DISAPPROVAL OF REPORTS AND PLANS.—

"(1) DEADLINE.—Subject to paragraph (2), not later than 180 days after the date of submission to the Administrator of any report or plan under this section (other than subsections (i) and (j)), the Administrator shall either approve or disapprove such report or plan, as the case may be. The Administrator may approve a portion of a plan under this subsection. If the Administrator does not disapprove a report, plan, or portion of a plan in such 180-day period, such report, plan, or portion shall be deemed approved for purposes of this section.

"(2) PROCEDURE FOR DISAPPROVAL.—If, after notice and opportunity for public comment and consultation with appropriate Federal and State agencies and

other interested persons, the Administrator determines that a plan submitted under subsection (b) or any portion thereof is not likely to satisfy, in whole or in part, the goals and requirements of this Act, that adequate authority does not exist, or adequate resources are not available, to implement such plan or portion, that the schedule for implementing such plan or portion is not sufficiently expeditious, or that the practices and measures proposed in such plan or portion are not adequate to improve the quality of navigable waters in the State and to reduce the level of pollution in navigable waters in the State resulting from nonpoint sources, the Administrator shall disapprove the plan or portion thereof with respect to which the Administrator makes such determination. The Administrator shall notify the State of such disapproval and request specific revisions of such plan or portion necessary to obtain approval of such plan or portion. Not later than 90 days after the date of such notification, the State shall submit to the Administrator for his approval under this subsection its revisions of such plan or portion.

"(f) LOCAL PLANS; TECHNICAL ASSISTANCE.—If a State fails to submit a plan under subsection (b) or the Administrator does not approve such a plan, a local public agency or organization which has expertise in, and authority

to, control water pollution resulting from nonpoint sources in any area of such State which the Administrator determines is of sufficient geographic size may, with approval of such State, request the Administrator to provide, and the Administrator shall provide, technical assistance to such agency or organization in developing for such area a plan which is described in subsection (b) and meets the requirements of subsection (e). After development of such plan, such agency or organization shall submit such plan to the Administrator for his approval. If the Administrator approves such plan, such agency or organization shall be eligible to receive financial assistance under subsection (i) for implementation of such plan as if such agency or organization were a State for which a report submitted under subsection (a) and a plan submitted under subsection (b) were approved under this section. Such financial assistance shall be subject to the same terms and conditions as assistance provided to a State under subsection (i).

"(g) TECHNICAL ASSISTANCE FOR STATES.—Upon request of a State, the Administrator may provide technical assistance to such State in developing a plan under subsection (b) for those portions of the navigable waters requested by such State.

"(h) INTERSTATE MANAGEMENT CONFERENCE.—

"(1) CONVENING OF CONFERENCE; NOTIFICATION; PURPOSE.—If any portion of the navigable waters in any State which is implementing a plan approved under this section is not meeting applicable water quality standards or the goals and requirements of this Act as a result, in whole or part, of pollution from nonpoint sources in another State, such State may petition the Administrator to convene, and the Administrator shall convene, a management conference of all States which contribute pollution resulting from nonpoint sources to such portion. If, on the basis of information available to him, the Administrator determines that a State is not meeting applicable water quality standards or the goals and requirements of this Act as a result, in whole or part, of pollution from nonpoint sources in another State, the Administrator shall notify such States. The Administrator may convene a management conference under this paragraph not later than 180 days after giving such notification, whether or not the State which is not meeting such standards requests such conference. The purpose of such conference shall be to develop an agreement among such States to reduce the level of pollution in such portion resulting from nonpoint sources and to improve the water quality of such portion.

"(2) State plan requirement.—Each State which contributes significant pollution from nonpoint sources to the portion of navigable waters in amounts which contribute to such portion not meeting applicable water quality standards or the goals and requirements of this Act shall submit to the Administrator for his approval a plan referred to in subsection (b) to reduce the level of pollution in such portion resulting from nonpoint sources in such State and to improve the quality of such portion; except that if such State has an approved plan under subsection (b), such State shall revise such plan to reduce the level of pollution in such portion resulting from nonpoint sources in such State and to improve the water quality of such portion and submit such revised plan to the Administrator for his approval under this section. Such plan or revised plan shall be consistent with existing Federal and State law. After approval, the State shall implement such plan or revised plan.

"(i) Grant Program.—

"(1) Grants for implementation of plans.—Upon application of a State for which a report submitted under subsection (a) and a plan submitted under subsection (b) is approved under this section, the Administrator shall make grants under this

subsection to such State for the purpose of assisting the State in implementing such plan.

"(2) Applications.—An application for a grant under this subsection in any fiscal year shall be in such form and shall contain such other information as the Administrator may require, including an identification and description of the best management practices and measures which the State proposes to assist, encourage, or require in such year with the Federal assistance to be provided under the grant.

"(3) Federal share.—

"(A) In general.—The Federal share of the cost of each plan implemented with Federal assistance under this subsection in any fiscal year shall not exceed 50 percent of the cost incurred by the State in implementing such plan.

"(B) Exception.—The Federal share of those costs of any such plan which are attributable to a watershed area with respect to which the Administrator determines that a significant number of non-Federal, non-State interests of such area are willing and able to enter into agreements to participate in such year in nonpoint source pollution control measures under such plan

shall be not less than 50 percent and not more than 60 percent of such cost.

"(C) LIMITATION ON ADMINISTRATIVE COSTS.—For purposes of this paragraph, administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against activities and programs carried out with a grant under this subsection shall not exceed in any fiscal year 10 percent of the amount of the grant in such year, except that costs of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer programs shall not be subject to this limitation.

"(4) MAINTENANCE OF EFFORT.—No grant may be made to a State under this subsection in any fiscal year unless such State enters into such agreements with the Administrator as the Administrator may require to ensure that such State will maintain its aggregate expenditures from all other sources for programs for controlling pollution added to the navigable waters in such State from nonpoint sources and improving the quality of such waters at or above the average level of such expenditures in its two fiscal years preceding the date of enactment of this subsection.

"(5) REPORTING AND OTHER REQUIREMENTS.—

"(A) REPORT.—Each State which receives a grant under this subsection in any fiscal year shall submit to the Administrator a written report which describes the activities and programs carried out in the State under such grant and the progress made by such State in meeting the schedule specified under subsection (b)(2)(B).

"(B) SATISFACTORY PROGRESS.—No grant may be made under this subsection in any fiscal year to a State which in the preceding fiscal year received a grant under this subsection unless the Administrator determines that such State made satisfactory progress in such preceding fiscal year in meeting the schedule specified by such State under subsection (b)(2)(B).

"(6) LIMITATION ON GRANT AMOUNTS.—Notwithstanding any other provision of this subsection, not more than 15 percent of the amount appropriated to carry out this subsection may be used to make grants to any one State, including any grants to any local public agency or organization with authority to control pollution from nonpoint sources in any area of such State.

"(7) PRIORITY FOR EFFECTIVE REGULATORY MECHANISMS.—For each fiscal year beginning after September 30, 1987, the Administrator may give priority in making grants under this subsection, and shall give consideration in determining the Federal share of any such grant, to any State which has included effective regulatory mechanisms in an approved State plan under this section and has implemented such mechanisms in the preceding fiscal year. Such mechanisms shall include, but are not limited to, deadlines for implementation of best management practices and enforcement procedures to ensure implementation of such plan.

"(8) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection not to exceed $150,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990. Sums appropriated to carry out this subsection shall remain available until expended.

"(j) REPORTS OF ADMINISTRATOR.—

"(1) ANNUAL REPORTS.—Not later than January 1, 1986, and each January 1 thereafter the Administrator shall transmit to the Committee on Public

Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate, a report for the preceding fiscal year on the activities and programs implemented under this section and the progress made in reducing pollution in the navigable waters resulting from nonpoint sources and improving the quality of such waters.

"(2) FINAL REPORT.—Not later than January 1, 1989, the Administrator shall transmit to Congress a final report on the activities carried out under this section. Such report, at a minimum, shall include—

"(A) an analysis of the effectiveness of plans carried out under this section and of the best management practices and measures utilized under those plans in controlling nonpoint sources of pollution;

"(B) an analysis of the level of State participation in implementing such plans; and

"(C) recommendations of the Administrator concerning future programs (including enforcement programs) for controlling pollution from nonpoint sources.

"(k) SET ASIDE FOR ADMINISTRATIVE PERSONNEL.—Not less than 5 percent of the funds appropriated to carry out subsection (i) for any fiscal year shall be available

to the Administrator to maintain personnel levels at the Environmental Protection Agency at levels which are adequate to carry out this section in such year.".

(b) CONFORMING AMENDMENT.—Section 304(k)(1) of the Federal Water Pollution Control Act is amended by inserting "and 319" after "208".

SEC. 8. LAKE RESTORATION GUIDANCE MANUAL.

Section 104(h) is amended by inserting "(1)" after "(h)" and by adding at the end thereof the following:

"(2) The Administrator shall submit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than one year after the date of the enactment of this paragraph a lake restoration guidance manual establishing procedures to guide future State and local efforts to improve water quality in lakes.".

SEC. 9. SMALL FLOWS CLEARINGHOUSE.

Section 104(q) is amended by adding at the end thereof the following new paragraph:

"(4) Notwithstanding section 205(d) of this Act, from amounts that are set aside for a fiscal year under section 205(i) of this Act and are not obligated by the end of the 24-month period of availability for such amounts under section 205(d), the Administrator shall make available $1,000,000 or such unobligated amount, whichever is less, to support a

national clearinghouse within the Environmental Protection Agency to collect and disseminate information on small flows of sewage and innovative or alternative wastewater treatment processes and techniques, consistent with paragraph (3). This paragraph shall apply with respect to amounts set aside under section 205(i) for which the 24-month period of availability referred to in the preceding sentence ends on or after September 30, 1985.".

SEC. 10. ELIGIBLE CATEGORIES OF PROJECTS.

(a) Collector Sewers and Combined Sewer Overflows.—The second sentence of section 201(g)(1) is amended by striking out "appurtenances, and" and inserting in lieu thereof "appurtenances," and by striking out the period at the end of such sentence and inserting in lieu thereof the following: ", and projects to address water quality problems due to impacts of discharges from combined stormwater and sanitary sewer overflows.".

(b) Nonpoint Sources.—The last sentence of section 201(g)(1) is amended by—

(1) striking out "sentence," the first place it appears and inserting in lieu thereof "sentences,";

(2) inserting "(A)" after "October 1, 1984, for"; and

(3) inserting before "except that" the following: "and (B) any purpose for which a grant may be made

under section 319(i) of this Act (including any innovative and alternative approaches for the control of nonpoint sources of pollution),".

SEC. 11. TIME LIMIT ON RESOLVING CERTAIN DISPUTES.

Section 201 is amended by adding at the end thereof the following new subsection:

"(p) TIME LIMIT ON RESOLVING CERTAIN DISPUTES.—In any case in which a dispute arises with respect to the awarding of a contract for construction of treatment works by a grantee of funds under this title and a party to such dispute files an appeal with the Administrator under this title for resolution of such dispute, the Administrator shall make a final decision on such appeal within 60 days of the filing of such appeal.".

SEC. 12. FEDERAL SHARE.

(a) COMBINED SEWER OVERFLOWS.—The last sentence of section 202(a)(1) is amended—

(1) by inserting after "correction" the first place it appears the following: "or a project to address water quality problems due to impacts of discharges from combined storm water and sanitary sewer overflows"; and

(2) by striking out "and" after "interceptors," and by inserting after "correction" the third place it

appears the following: ", and project to address such problems".

(b) PROJECTS UNDER JUDICIAL INJUNCTION.—Section 202(a)(1) is amended by adding at the end thereof the following: "Notwithstanding the first sentence of this paragraph, in the case of a project for which an application for a grant under this title has been made to the Administrator before October 1, 1984, and which project is under judicial injunction on such date prohibiting its construction, such project shall be eligible for grants at 75 percent of the cost of construction thereof.".

(c) BIODISC EQUIPMENT.—Section 202(a)(3) is amended by inserting at the end thereof the following: "In addition, the Administrator is authorized to make a grant to fund all of the costs of the modification or replacement of biodisc equipment (rotating biological contractors) in any publicly owned treatment works if the Administrator finds that such equipment has failed to meet design performance specifications, unless such failure is attributable to negligence on the part of any person, and if such failure has significantly increased capital or operating and maintenance expenditures.".

(d) INNOVATIVE PROCESS.—The activated bio-filter feature of the project for treatment works of the city of Little Falls, Minnesota, shall be deemed to be an innovative

wastewater process and technique for purposes of section 202(a)(2) of the Federal Water Pollution Control Act and the amount of any grant under such Act for such feature shall be 85 percent of the cost thereof.

SEC. 13. AGREEMENT ON ELIGIBLE COSTS; GRANTEE CERTIFICATION OF TREATMENT PROCESS; TURNKEY CONTRACTS.

(a) AGREEMENT ON ELIGIBLE COSTS; GRANTEE CERTIFICATION.—Section 203(a) is amended by inserting "(1)" after "(a)", by designating the last sentence as paragraph (4) and indenting such sentence as a paragraph, and by inserting before paragraph (4) as so designated the following:

"(2)(A) Before taking final action on any plans, specifications, and estimates submitted under this subsection, the Administrator shall enter into a written agreement with the applicant which establishes and specifies which items of the proposed project are eligible for Federal payments under this section. The Administrator may not later modify such eligibility determinations unless they are found to have been made in violation of applicable Federal statutes and regulations.

"(B) Eligibility determinations under this paragraph shall not preclude the Administrator from auditing a project pursuant to section 501 of this Act, or other authority, or

from withholding or recovering Federal funds for costs which are found to be unreasonable, unsupported by adequate documentation, or otherwise unallowable under applicable Federal cost principles, or which are incurred on a project which fails to meet the design specifications or effluent limitations contained in the grant agreement and permit pursuant to section 402 of this Act for such project.

"(3) The approval of construction plans and specifications by the Administrator under this section shall not include a determination or approval of the treatment work's unit processes, or the configuration of the treatment work's unit processes, which constitute the treatment technology. The Administrator shall not approve plans, specifications, and estimates for a project under this section unless the applicant certifies that the proposed unit processes and treatment technology are capable of meeting the effluent limitations for which such process and technology are designed.".

(b) TURNKEY CONTRACTS.—Section 203 is amended by adding at the end thereof the following new subsection:

"(f) TURNKEY CONTRACTS.—

"(1) GENERAL AUTHORITY FOR LOW COST PROJECTS.—After completion of an approved facility plan for construction of a treatment works which has an estimated total cost of $8,000,000 or less (as determined by the Administrator), the applicant proposing

to construct such treatment works may, in lieu of proceeding under the other provisions of this section, enter into an agreement with the Administrator under this subsection for the preparation of construction plans and specifications and the building and erection of such treatment works.

"(2) REQUIRED TERMS AND CONDITIONS.—An agreement entered into under this subsection shall—

"(A) set forth an amount agreed to by the Administrator and the applicant as the maximum Federal contribution to the project, based upon a determination of the federally eligible costs of the project at the applicable Federal share under section 202 of this Act;

"(B) set forth a date for completion of construction of the treatment works by the applicant and a schedule of payments by the Administrator of the Federal contribution to the project;

"(C) contain such assurances by the applicant as the Administrator may require that (i) the proposed treatment works will be an operable unit and will meet all the requirements of this title (except as otherwise provided in paragraph (3) of this subsection), and (ii) not later than one year after the date specified as the date for completion

of construction of the treatment works, the treatment works will be operating so as to meet the requirements of any applicable permit for such treatment works under section 402 of this Act;

"(D) require the applicant and any agent or contractor of the applicant to provide a bond in an amount determined necessary by the Administrator to protect the Federal interest in the project; and

"(E) contain such other terms and conditions as the Administrator deems necessary to ensure compliance with this title (except as provided in paragraph (3) of this subsection).

"(3) NONAPPLICABILITY OF CERTAIN STATUTORY REQUIREMENTS.—Sections 201(g)(3), 203 (other than this subsection and except with respect to the development and approval of a facility plan), 204(a)(5), 204(a)(6), and 204(d)(1) shall not apply to grants made pursuant to this subsection.

"(4) INTEREST-BEARING ACCOUNTS.—

"(A) DEPOSIT OF FEDERAL CONTRIBUTION.—Upon entering into an agreement under this subsection, the Administrator shall deposit, from amounts allotted to the State for such fiscal year under section 205 of this Act, the amount of

the Federal contribution to the project agreed upon by the Administrator and the applicant into an interest-bearing account. Such amount shall be available only for making payments to the grantee in accordance with the schedule contained in the agreement.

"(B) LIMITATION ON USE OF EARNED INTEREST.—Interest earned on amounts in the account under subparagraph (A) shall be available for payments to the grantee. Such payments shall be made solely for the purpose of reducing the net interest costs incurred by the grantee on obligations issued by the grantee for construction of such treatment works. The amount of such payments shall be in addition to the Federal share of the project otherwise allowable. The amount of any such interest earned which exceeds the amount of such interest costs incurred shall be deposited in the general fund of the Treasury after the final audit of the project.

"(5) ADMINISTRATIVE PROVISIONS.—

"(A) RESERVATION UNTIL FINAL AUDIT.—The Administrator shall reserve a portion of the amount in the account under paragraph (4)(A) until the final audit of the project.

"(B) Reallotment of any excess.—If the amount deposited into the account by the Administrator under paragraph (4)(A) exceeds the cost of preparing construction plans and specifications and the building and erection of the treatment works, the Administrator shall reallot the amount of the excess to the State in which such treatment works is located for the fiscal year in which such audit is completed.

"(6) Per state limitation.—The Administrator shall not obligate more than 20 percent of the amount allotted to a State for a fiscal year under section 205 of this Act for grants pursuant to this subsection.

"(7) Limitation on federal contribution.—In no event shall the Federal contribution for the cost of preparing construction plans and specifications and the building and erection of treatment works pursuant to this subsection exceed the amount agreed upon under paragraph (2), plus interest paid to the grantee under paragraph (4)(B).

"(8) Noncompliance with agreement.—In any case in which the recipient of a grant made pursuant to this subsection does not comply with the terms of the agreement entered into under paragraph (2), the

Administrator is authorized to take such action as may be necessary to recover the amount of the Federal contribution to the project.

"(9) LIMITATION ON ELIGIBILITY OF RECIPIENTS OF TURNKEY GRANTS.—A recipient of a grant made pursuant to this subsection shall not be eligible for any other grants under this title.".

SEC. 14. GRANT CONDITIONS; USER CHARGES ON LOW-INCOME RESIDENTIAL USERS.

(a) INCLUSION OF PROJECT IN AREAWIDE PLAN.—Section 204(a)(1) is amended to read as follows:

"(1) that any required areawide waste treatment management plan under section 208 of this Act (A) is being implemented for such area and the proposed treatment works are included in such plan, or (B) is being developed for such area and reasonable progress is being made toward its implementation and the proposed treatment works will be included in such plan;".

(b) CONTINUING PLANNING PROCESS.—Section 204(a)(2) is amended to read as follows:

"(2) that (A) the State in which the project is to be located (i) is implementing any required plan under section 303(e) of this Act and the proposed treatment works are in conformity with such plan, or (ii) is developing such a plan and the proposed treatment works

will be in conformity with such plan, and (B) such State is in compliance with section 305(b) of this Act;".

(c) USER CHARGES ON LOW-INCOME RESIDENTIAL USERS.—Section 204(b)(1) is amended by adding at the end thereof the following: "A system of user charges which imposes a lower charge for low-income residential users (as defined by the Administrator) shall be deemed to be a user charge system meeting the requirements of clause (A) of this paragraph if the Administrator determines that such system was adopted after public notice and hearing.".

(d) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act, except that the amendments made by subsections (a) and (b) shall take effect on the last day of the two-year period beginning on such date of enactment.

SEC. 15. ALLOTMENT OF CONSTRUCTION GRANT FUNDS.

(a) FORMULA.—

(1) DATE OF ALLOTMENT.—Section 205(c)(2) is amended by inserting after the first sentence the following: "Sums authorized to be appropriated pursuant to section 207 for the fiscal years 1986, 1987, 1988, 1989, and 1990 shall be allotted for each such year by the Administrator not later than the tenth day which

begins after the date of the enactment of the Water Quality Renewal Act of 1985.".

*(2) E*XTENSION*.—Section 205(c)(2) is further amended by striking out "and September 30, 1985," and inserting in lieu thereof "September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990,".*

*(b) M*INIMUM *A*LLOTMENT*.—*

*(1) E*XTENSION*.—Section 205(e) is amended by striking out "and 1985" each place it appears and inserting in lieu thereof "1985, 1986, 1987, 1988, 1989, and 1990".*

*(2) T*ERRITORIES*.—The first sentence of section 205(e) is amended—*

(A) by inserting "the Commonwealth of the Northern Mariana Islands," after "Samoa,";

(B) by striking out "thirty-three one-hundredths of 1 per centum" and inserting in lieu thereof "two-thirds of one percent"; and

(C) by striking out "four" and inserting in lieu thereof "five".

*(c) C*OSTS OF *A*DMINISTRATION*.—Section 205(g)(1) is amended by striking out "1985" and inserting in lieu thereof*

"1990" and by striking out the period after "4 per centum" and inserting in lieu thereof a comma.

(d) INTERSTATE SANITARY COMMISSION.—Section 205(g) is amended by adding at the end thereof the following new paragraph:

"(3) The Administrator shall reserve each fiscal year beginning after September 30, 1985, $900,000 from the sums available to the State of New York under this subsection for such fiscal year, $900,000 from the sums available to the State of New Jersey under this subsection for such fiscal year, and $200,000 from the sums available to the State of Connecticut under this subsection for such fiscal year. Sums reserved under this paragraph shall be used by the Administrator to make a grant for each such fiscal year to the Interstate Sanitation Commission established by such States by interstate compact to carry out the functions of such Commission under this Act.".

(e) RURAL SET ASIDE.—

(1) INCREASE IN MANDATORY SET ASIDE FOR RURAL STATES.—The first sentence of section 205(h) is amended by striking out "four per centum" and inserting in lieu thereof "a total (as determined by the Governor of the State) of not less than four percent nor more than seven and one-half percent".

(2) INCREASE IN AUTHORIZED SET ASIDE FOR OTHER STATES.—The second sentence of section 205(h) is amended by striking out "four per centum" and inserting in lieu thereof "seven and one-half percent".

(f) SET ASIDE FOR INNOVATIVE AND ALTERNATIVE PROCESSES AND TECHNIQUES.—Section 205(i) is amended by striking out "and September 30, 1985," and inserting in lieu thereof "September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990,".

(g) ALLOCATION OF PLANNING FUNDS TO REGIONAL ORGANIZATIONS.—Section 205(j)(3) is amended by adding at the end thereof the following: "In giving such priority, the State shall allocate at least 50 percent of the amount granted to such State for a fiscal year under this subsection to regional and interstate public comprehensive planning organizations in such State, except in any fiscal year for which the Administrator, after consultation with the Governor of such State and such organizations, determines that allocation of at least 50 percent to such organizations will not substantially assist in achieving the goals of this Act.".

(h) RESERVATION OF FUNDS FOR INVESTIGATIONS AND AUDITS.—Section 205 is amended by adding at the end thereof the following new subsection:

"(l) Reservation for Investigations and Audits.—One-quarter of one percent of any amount appropriated under section 207 of this Act for any fiscal year beginning after September 30, 1985, shall be reserved by the Administrator for carrying out investigations and audits authorized by this Act of projects for which funds are made available under this title. Such sums shall be in addition to, and not in lieu of, any sums otherwise appropriated for or allocated to the Office of the Inspector General.".

SEC. 16. GRANTS TO STATES FOR ESTABLISHMENT OF WATER POLLUTION CONTROL REVOLVING FUNDS.

(a) In General.—Title II is amended by adding at the end thereof the following new section:

"SEC. 220. GRANTS TO STATES FOR ESTABLISHMENT OF REVOLVING FUNDS.

"(a) General Authority; Amount of Grant.—

"(1) General authority; construction assistance.—Subject to the provisions of this section, the Administrator shall make grants to each State for the purpose of establishing a revolving fund for providing assistance to municipalities and intermunicipal and interstate agencies for construction of treatment works (as defined in section 212 of this Act) which are publicly owned.

"(2) AMOUNT OF GRANT.—The amount of a grant to a State under this section for any fiscal year shall equal the amount allotted to such State under this section for such fiscal year.

"(b) GENERAL GRANT REQUIREMENTS.—

"(1) DEPOSITS INTO REVOLVING FUNDS.—

"(A) MANDATORY DEPOSITS.—A grant shall not be made for a fiscal year to a State under this section unless the State has first deposited in the revolving fund established by the State under this section from non-Federal sources an amount equal to 20 percent of the amount allotted to the State under this section for such fiscal year.

"(B) DISCRETIONARY DEPOSITS.—In addition to any amounts deposited in such revolving fund under subparagraph (A), the Governor of the State may deposit not to exceed 20 percent of the amount allotted to the State under section 205 of this Act for any fiscal year beginning after September 30, 1985, if the State has first deposited in such fund from non-Federal sources an amount equal to 20 percent of the amount to be deposited from such allotment.

"(2) ANNUAL CERTIFICATION.—Each State shall submit to the Administrator annually a certification—

"(A) that upon completion of any project for treatments works for which financial assistance is made available from the revolving fund established by such State under this section, discharges from such treatment works will meet all applicable requirements necessary to achieve applicable State and Federal water quality standards; and

"(B) that such State will comply with all provisions of this section.

"(c) FORMS OF REVOLVING FUND ASSISTANCE.—Assistance described in subsection (a)(1) for construction of treatment works may only be provided from a revolving fund established under subsection (d)(1) in the form of a loan, loan guarantee, payment to reduce interest on a loan, bond interest subsidy, bond guarantee, or purchase of insurance for obligations. In addition, to the extent provided by State law, the State may issue revenue or general obligation bonds to finance projects for construction of treatment works described in subsection (a)(1) and on the State's priority list under section 216 using amounts in such fund as a source of revenue or security for the payment of interest and principal on such bonds, if the proceeds of the sale of such bonds are deposited in such fund.

"(d) STATE WATER POLLUTION CONTROL REVOLVING FUNDS.—

"(1) ESTABLISHMENT.—

"(A) PURPOSES.—Each State shall establish a Water Pollution Control Revolving Fund to provide assistance described in subsection (a)(1) for construction of treatment works.

"(B) STATE DEPOSITS.—The State shall deposit in such revolving fund any Federal funds allotted to the State under this section, any amounts received by the State for repayment of loans made by the State with amounts in such fund, any amounts required or authorized to be deposited in such fund under subsection (b)(1), and any additional funds (except for funds received under any other section of this title) which the State wishes to deposit in such fund.

"(2) ADMINISTRATIVE EXPENSES.—The State may use amounts in such revolving fund for the payment of expenses of administration of such fund; except that, in any fiscal year in which the State receives a grant under this section, the State may not use more than four percent of the amount of such grant for the payment of such expenses in such fiscal year.

"(3) INVESTMENTS.—The State may invest any portion of the funds in such revolving fund which is not currently needed for providing assistance described in subsection (a)(1) and for payment of administrative expenses under paragraph (2).

"(4) LIMITATION TO PREVENT DOUBLE BENEFITS.—If the State makes, from such revolving fund, a loan which will finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works, the State shall ensure that if the recipient of such loan receives a grant under section 201(g) of this Act for construction of such treatment works and an allowance under section 201(l)(1) for non-Federal funds expended for such planning and preparation, such recipient will promptly repay such loan to the extent of such allowance.

"(5) ELIGIBILITY OF NON-FEDERAL PORTION OF CONSTRUCTION GRANT PROJECTS.—The State may provide assistance from such revolving fund to a municipality or intermunicipal or interstate agency with respect to the non-Federal share of the costs of a project for which such municipality or agency is receiving assistance from the Administrator under any other section of this title.

"(6) DEDICATED SOURCE OF REVENUE FOR LOAN REPAYMENT.—The State may only make a loan from such revolving fund to a municipality or intermunicipal or interstate agency if such municipality or agency first establishes a dedicated source of revenue for the repayment of such loan.

"(7) PRIORITY LIST REQUIREMENT.—The State may provide financial assistance from such revolving fund only with respect to a project for construction of a treatment works described in subsection (a)(1) if such project is on the State's priority list under section 216 of this Act. Such assistance may be provided regardless of the rank of such project on such list.

"(e) ADMINISTRATIVE PROVISIONS.—

"(1) STATE REPORTS.—Each State shall annually make a full and complete report to the Administrator concerning the use of funds deposited in the revolving fund established by such State under this section in such manner as the Administrator shall prescribe.

"(2) ANNUAL AUDITS.—The Administrator shall, at least on an annual basis, conduct or require each State to have independently conducted reviews and audits as may be deemed necessary or appropriate by the Administrator to carry out the objectives of this section. Audits of the use of funds deposited in the revolv-

ing fund established by such State shall be conducted in accordance with the auditing procedures of the General Accounting Office.

"(f) APPLICABILITY OF OTHER PROVISIONS.—Except to the extent provided in this section, the other provisions of this title shall not apply to grants under this section.

"(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section not to exceed $600,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990; not to exceed $2,400,000,000 for the fiscal year ending September 30, 1991, not to exceed $1,800,000,000 for the fiscal year ending September 30, 1992, not to exceed $1,200,000,000 for the fiscal year ending September 30, 1993, and not to exceed $600,000,000 for the fiscal year ending September 30, 1994.

"(h) ALLOTMENT OF FUNDS.—

"(1) SAME FORMULA AS CONSTRUCTION GRANT ALLOTMENT.—Sums authorized to be appropriated to carry out this section for any fiscal year shall be allotted by the Administrator in the same manner and in accordance with the same table as the funds which are authorized to be appropriated under section 207 of this Act are allotted for such fiscal year.

"(2) EXCEPTION.—For any fiscal year for which sums are authorized to be appropriated to carry out this section and for which sums are not authorized to be appropriated to carry out section 207, the sums authorized to be appropriated to carry out this section shall be allotted by the Administrator in the same manner and in accordance with the same table as the funds which were authorized to be appropriated under section 207 were allotted for the most recent fiscal year for which there was such an authorization under section 207.

"(3) REALLOTMENT.—

"(A) EXPIRATION OF PERIOD OF AVAILABILITY.—Sums allotted to a State under this subsection for a fiscal year shall remain available for a grant to such State for the fiscal year for which authorized and for the following two fiscal years. Any funds remaining after the last day of such third fiscal year shall be reallotted among the other States.

"(B) UNUTILIZED FUNDS.—Any funds granted to a State for a fiscal year under this section which are not utilized by such State for providing assistance described in subsection (a)(1) for construction of treatment works during such

fiscal year and the following two fiscal years shall be repaid to the Administrator for reallotment among the other States.".

(b) CONFORMING AMENDMENT.—Section 207 is amended by striking out "and 209," and inserting in lieu thereof the following: "209, and 220 (except as provided in section 220(b)(1)(B)),".

SEC. 17. INNOVATIVE TECHNOLOGY COMPLIANCE DEADLINES FOR DIRECT DISCHARGERS.

Section 301(k) is amended by striking out "July 1, 1987," and inserting in lieu thereof "two years after the date for compliance with such effluent limitation which would otherwise be applicable under such subsection,".

SEC. 18. VARIANCES FROM THE APPLICATION OF EFFLUENT LIMITATIONS.

(a) IN GENERAL.—Section 301 is amended by adding at the end thereof the following new subsection:

"(n) VARIANCES.—

"(1) FUNDAMENTALLY-DIFFERENT FACTORS.—Upon application of any person who provides (or does not have a reasonable opportunity to provide) information to the Administrator in the rulemaking to establish or revise any effluent limitation under this section or section 304 of this Act, the Administrator may grant a variance from the application of such limitation with

respect to the discharge of any pollutant by such person if the Administrator determines that factors relating to the facilities, equipment, and processes of such person are fundamentally different than the factors considered in such rulemaking.

"(2) TIME LIMIT FOR APPLICATIONS.—An application for a variance from the application of an effluent limitation under this subsection must be filed with the Administrator within 180 days after the date on which such limitation is established or revised, as the case may be.

"(3) TIME LIMIT FOR DECISION.—The Administrator, to the maximum extent practicable, shall approve or deny any application filed under this subsection within 180 days after the date such application is filed with the Administrator.

"(4) LIMITATION ON APPLICABILITY.—This subsection shall only apply with respect to effluent limitations established or revised after the date of the enactment of this subsection.

"(5) EFFECT OF DENIAL OF APPLICATION.—If an application for a variance from the application of an effluent limitation under this subsection is denied by the Administrator, the applicant must comply with

such limitation as established or revised, as the case may be.".

(b) SAVINGS CLAUSE.—The amendment made by subsection (a) shall not affect any procedures or requirements in effect before the date of the enactment of this Act with respect to the granting of variances from the application of effluent limitations established or revised on or before such date of enactment.

SEC. 19. WATER QUALITY CRITERIA.

Section 304(a)(1) is amended by adding at the end thereof the following: "In developing, publishing, and revising criteria under this paragraph after the date of the enactment of this sentence, the Administrator shall consider, among other things, the effects on the ecosystem of (i) water hardness, (ii) pH, (iii) chemical and physical interactions, (iv) persistence of pollutants and the long-term effects of pollutants, (v) sedimentation from chemical reaction of pollutants, (vi) the absorptive properties of sediments, (vii) resuspension, and (viii) bio-uptake. New or revised criteria under this paragraph should be established so as to provide an ample margin of safety to protect human health and fish and wildlife resources. Whenever, in developing new or revised criteria under this paragraph with respect to a pollutant, the Administrator determines that a well-founded and significant difference of opinion exists as to the latest scientific and re-

search knowledge on the matters referred to in the preceding sentence, the Administrator shall publish a description of such difference of opinion along with the publication of such criteria.".

SEC. 20. TEST PROCEDURES.

Section 304(h) is amended by striking out ", within one hundred and eighty days from the date of enactment of this title," and inserting in lieu thereof ", within ninety days from the date of the enactment of the Water Quality Renewal Act of 1985,".

SEC. 21. PRETREATMENT STANDARDS.

(a) EXTENSION OF STANDARDS BY POTW APPLYING INNOVATIVE SYSTEM.—Section 307 is amended by adding at the end the following:

"(e) COMPLIANCE DATE EXTENSION FOR INNOVATIVE PRETREATMENT SYSTEMS.—In the case of any new or existing facility that proposes to comply with the pretreatment standards of subsection (b) of this section by applying an innovative system that meets the requirements of section 301(k) of this Act, the owner or operator of the publicly owned treatment works receiving the treated effluent from such facility may extend the date for compliance with the applicable pretreatment standard established under this section for a period not to exceed two years—

"(1) if the Administrator determines that the innovative system has the potential for industrywide application, and

"(2) if the Administrator (or the State, in any case in which the State has a pretreatment program approved by the Administrator)—

"(A) determines that the proposed extension will not cause the publicly owned treatment works to be in violation of its permit under section 402, and

"(B) concurs with the proposed extension.".

(b) INCREASE IN EPA EMPLOYEES.—The Administrator shall take such actions as may be necessary to increase the number of employees of the Environmental Protection Agency in order to effectively implement pretreatment requirements under section 307 of the Federal Water Pollution Control Act.

SEC. 22. CRIMINAL PENALTIES.

Section 309(c) is amended to read as follows:

"(c) CRIMINAL PENALTIES.—

"(1) NEGLIGENT VIOLATIONS.—Any person who—

"(A) negligently violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any

of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army, acting through the Chief of Engineers, or by a State; or

"(B) negligently introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage or which causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State;

shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment of not more than two years, or by both.

"(2) KNOWING VIOLATIONS.—Any person who—

"(A) knowingly violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army, acting through the Chief of Engineers, or by a State; or

"(B) knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage or which causes such treatment works to violate any effluent limitation or condition in a permit issued to the treatment works under section 402 of this Act by the Administrator or a State;

shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than

$100,000 per day of violation, or by imprisonment of not more than four years, or by both.

"(3) COMPLIANCE AS AFFIRMATIVE DEFENSE.—It shall be an affirmative defense under paragraphs (1)(B) and (2)(B) of this subsection that the introduction of any pollutant or hazardous substance into a sewer system or a publicly owned treatment works was in compliance with all applicable Federal, State, and local requirements which govern the introduction of a pollutant or hazardous substance into a sewer or publicly owned treatment works.

"(4) FALSE STATEMENTS.—Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of viola-

tion, or by imprisonment of not more than four years, or by both.

"(5) Responsible corporate officer as 'person'.—For the purpose of this subsection, the term 'person' means, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.

"(6) Hazardous substance defined.—For the purpose of this subsection, the term 'hazardous substance' means (A) any substance designated pursuant to section 311(b)(2)(A) of this Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of this Act, and (E) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.".

SEC. 23. CIVIL PENALTIES.

(a) INCREASE IN PENALTY.—Section 309(d) is amended by striking out "$10,000" and inserting in lieu thereof "$25,000".

(b) INCREASED PENALTIES NOT REQUIRED UNDER STATES PROGRAMS.—The Federal Water Pollution Control Act shall not be construed as requiring a State to have a civil penalty for violations described in such section 309(d) which has the same monetary amount as the civil penalty established by such section, as amended by subsection (a) of this section.

SEC. 24. ADMINISTRATIVE PENALTIES.

(a) IN GENERAL.—Section 309 is amended by adding at the end thereof the following:

"(g) ADMINISTRATIVE PENALTIES.—

"(1) IN GENERAL.—Whenever on the basis of any information available to him or her—

"(A) the Administrator finds that any person is in violation of section 301 (except as it relates to section 404 of this Act), 302, 306, 307, 318, or 405 of this Act, or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or

"(B) the Secretary of the Army, acting through the Chief of Engineers (hereinafter in

this subsection referred to as the 'Secretary') finds that any person is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 404 of this Act by the Secretary or by a State,

the Administrator or Secretary, as the case may be, may, after consultation with the State in which the violation occurs, assess a civil penalty of not more than $10,000 per day of violation, except that such penalty shall not exceed a total of $125,000.

"(2) ADMINISTRATIVE REQUIREMENTS.—

"(A) NOTICE AND OPPORTUNITY FOR HEARING.—A civil penalty shall be assessed under this subsection by the Administrator or Secretary, as the case may be, by an order made on the record after opportunity (provided in accordance with this subparagraph) for a hearing in accordance with section 554 of title 5, United States Code. Before issuing such an order, the Administrator or Secretary, as the case may be, shall—

"(i) give written notice to the person to be assessed a civil penalty under such order of the Administrator's or Secretary's proposal to issue such order and provide such

person an opportunity to request, within 15 days of the date the notice is received by such person, such a hearing on the order; and

"(ii) provide public notice of and reasonable opportunity to comment on any proposed assessment.

"(B) NOTICE TO INTERESTED PERSONS.—Any person who comments on a proposed assessment shall be given notice of any hearing held under subparagraph (A) and any order assessing a penalty under this subsection. In any such hearing, such person shall have a reasonable opportunity to present evidence.

"(C) RIGHTS OF INTERESTED PERSONS TO A HEARING.—If no hearing is held before the issuance of an order assessing a penalty under this subsection, any person who commented on the proposed assessment may petition the Administrator or Secretary, as the case may be, to set aside such order and to provide a hearing on the penalty. The Administrator or Secretary shall set aside such order and provide such hearing in accordance with subparagraph (A) if the Administrator or Secretary determines that the evidence present-

ed by the petitioner in support of the petition is material and was not considered in the issuance of the order. If the Administrator or Secretary denies a hearing under this subparagraph, the Administrator or Secretary shall provide to the petitioner, and publish in the Federal Register, notice of the reasons for such denial.

"(D) FACTORS TO CONSIDER IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a civil penalty, the Administrator or Secretary, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, economic savings (if any) resulting from the violation, and such other matters as justice may require.

"(E) COMPROMISE OF AMOUNT.—The Administrator or Secretary, as the case may be, may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted

from any sums owing by the United States to the person charged.

"(F) FINALITY OF ORDER.—An order issued under this subsection shall become final 30 days after its issuance unless a petition for judicial review is filed under paragraph (3) or a hearing is requested under subparagraph (C). If such a hearing is denied, such order shall become final 30 days after such denial.

"(3) RIGHT OF INTERESTED PERSON TO APPEAL.—Any person who requested in accordance with paragraph (2)(A) or (2)(C) a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

"(4) RECOVERY OF UNPAID PENALTIES BY ATTORNEY GENERAL.—If any person fails to pay an assessment of a civil penalty—

"(A) after the order making the assessment has become a final order and if such person does

not file a petition for judicial review of the order in accordance with paragraph (3), or

"(B) after a court in an action brought under paragraph (3) has entered a final judgment in favor of the Administrator or Secretary, as the case may be,

the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 30-day period referred to in paragraph (3) or the date of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

"(5) SUBPOENAS.—The Administrator or Secretary, as the case may be, shall have the authority to issue subpoenas in connection with hearings under paragraph (2) of this subsection and may request the Attorney General to bring an action to enforce any subpoena under this subsection. The district courts shall have jurisdiction to enforce such subpoenas and impose sanctions.

"(6) EFFECT ON AUTHORITY OF ADMINISTRATOR.—Action taken by the Administrator or Secretary, as the case may be, pursuant to this subsection shall

not affect or limit the Administrator's or Secretary's authority to enforce any provision of this Act, except that any violation with respect to which a civil penalty is imposed under this subsection shall not be subject to a civil penalty under section 309(d) or section 311(b) of this Act.

"(7) EFFECT OF STATE ENFORCEMENT ACTION.—When a State has proceeded with an enforcement action relating to a violation with respect to which the Administrator or Secretary is authorized to assess a civil penalty under this subsection, the Administrator or Secretary, as the case may be, are not authorized to take any action under this subsection if the State demonstrates that the State imposed penalty is appropriate.

"(8) EFFECT OF ADMINISTRATOR'S ACTION ON COMPLIANCE.—No action by the Administrator under this subsection shall affect any person's obligation to comply with any section of this Act or with the terms and conditions of any permit issued pursuant to section 402 or 404 of this Act.".

(b) CITIZEN SUITS.—Section 505(b)(1) is amended by striking out the period at the end of subparagraph (B) and inserting ", or" and by adding at the end the following:

"(C) if the Administrator or State has commenced and is diligently pursuing the assessment of a civil penalty under section 309(g) of this Act.".

SEC. 25. CLEAN LAKES.

(a) APPLICATION OF PROGRAM TO SALINE LAKES.—Section 314(a)(1) is amended by striking out "fresh water".

(b) NONPOINT SOURCE GRANT PROGRAM; ANNUAL REPORT.—Section 314 is amended by adding at the end thereof the following new subsections:

"(d) PRIORITY PROJECTS FOR CONTROL OF NONPOINT SOURCES.—

"(1) GRANT PROGRAM.—The Administrator shall make grants to States for priority projects for control of nonpoint sources of pollution which are contributing to the degradation of water quality in lakes. The Administrator shall provide an equitable distribution of such sums to the States.

"(2) FEDERAL SHARE.—The amount granted to a State for a project under this subsection shall not exceed 70 per centum of the cost of such project.

"(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection not to exceed $50,000,000 per fiscal year for each of the fiscal years ending September 30, 1986,

September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990. Sums appropriated shall remain available until expended.

"(e) ANNUAL WATER QUALITY REPORT.—The Administrator shall submit annually to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the status and trend of water quality in lakes in the United States, including but not limited to, the nature and extent of pollution loading from point and nonpoint sources and the extent to which the use of lakes is impaired as a result of such pollution, particularly with respect to toxic pollution.".

(c) CONFORMING AMENDMENTS.—Section 314 is amended—

(1) in subsection (b), by striking out "this section" the first place it appears and inserting in lieu thereof "subsection (a) of this section";

(2) in subsection (c)(1), by striking out "this section" the first place it appears and inserting in lieu thereof "subsection (b) of this section" and by striking out "this section" the second place it appears and inserting in lieu thereof "subsection (a) of this section"; and

(3) in subsection (c)(2), by striking out "this section" the first place it appears and inserting in lieu thereof "subsection (b) of this section" and by striking out "this section" the second place it appears and inserting in lieu thereof "subsection (a) of this section".

(d) CLEAN LAKES PROJECTS.—

(1) LAKE HOUSTON, TEXAS.—

(A) STUDY; CONTROL MEASURES.—The Administrator shall, in cooperation with the State of Texas, study water quality problems in Lake Houston, Houston, Texas, and undertake such control measures as the Administrator and State determine are necessary to improve water quality. Such study shall include, but not be limited to, the evaluation of the feasibility of regional or consolidated waste treatment facilities and the development of recommendations for the cost-effective control of pollutants entering the Lake Houston watershed.

(B) REPORT.—The Administrator shall submit a report on the results of such study and identify such structural or nonstructural controls which were undertaken or are proposed, along with recommendations for further measures, to improve the water quality of Lake Houston, to the

Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than one year after the date of the enactment of this Act.

(C) AUTHORIZATION OF APPROPRIATIONS.—*There is authorized to be appropriated for fiscal years beginning after September 30, 1985, $10,000,000 to carry out this paragraph, to remain available until expended.*

(2) BEAVER LAKE, ARKANSAS.—

(A) STUDY.—*The Administrator, in cooperation with the Secretary of the Army, acting through the Chief of Engineers, and in consultation with appropriate State and local agencies, shall conduct a one-year comprehensive study of the Beaver Lake, Arkansas, to identify measures which will optimize achievement of the purposes for which Beaver Dam was constructed while preserving and enhancing the quality of the reservoir's water.*

(B) DEMONSTRATION PROJECT.—*Upon completion of the study, the Administrator shall undertake a demonstration project at Beaver Lake to determine the effectiveness of measures identi-*

fied in such study for preserving and enhancing the quality of the reservoir's water for current and future users.

(C) R*EPORT*.—*Upon completion of the demonstration project, the Administrator shall submit a report of such study and project, along with recommendations for further measures to improve the water quality of Beaver Lake, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.*

(D) A*VAILABILITY OF FUNDS*.—*Funds appropriated under subsections (c) and (d) of section 314 of the Federal Water Pollution Control Act shall be available to carry out this paragraph.*

(3) G*REENWOOD LAKE AND BELCHER CREEK, NEW JERSEY*.—

(A) D*EMONSTRATION PROJECT*.—*The Administrator shall undertake a demonstration project for the removal of silt, stumps, and other obstructions from Greenwood Lake and Belcher Creek, New Jersey.*

(B) R*EPORT*.—*Upon completion of the demonstration project, the Administrator shall submit a report on such project, along with recommenda-*

tions for further measures to improve the water quality of Greenwood Lake and Belcher Creek, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(C) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $10,000,000 to carry out this paragraph.

(4) DEAL LAKE, NEW JERSEY.—

(A) DEMONSTRATION PROJECT.—The Administrator shall undertake a demonstration project for the removal of silt and stumps from, and the control of pollution from nonpoint sources in, Deal Lake, Monmouth County, New Jersey.

(B) REPORT.—Upon completion of the demonstration project, the Administrator shall submit a report on such project, along with recommendations for further measures to improve the water quality of Deal Lake, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(C) *AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $8,000,000 to carry out this paragraph.*

(5) *ALCYON LAKE, NEW JERSEY.—*

(A) *DEMONSTRATION PROJECT.—The Administrator shall undertake a demonstration project for the restoration of Alcyon Lake, New Jersey, including removal and disposal of contaminated sediments in the lake.*

(B) *REPORT.—Upon completion of the demonstration project, the Administrator shall submit a report on such project, along with recommendations of further measures to improve the water quality of Alcyon Lake, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.*

(C) *AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $3,500,000 to carry out this paragraph.*

(6) *SAUK LAKE, MINNESOTA.—*

(A) *DEMONSTRATION PROJECT.—The Administrator shall undertake a demonstration project for the removal of silt and aquatic growth from Sauk Lake and its tributary streams in*

the vicinity of Sauk Centre, Stearns County, Minnesota.

(B) Report.—Upon completion of the demonstration project, the Administrator shall submit a report on such project, along with recommendations of further measures to improve the water quality of Sauk Lake, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(C) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $2,000,000 to carry out this paragraph.

(7) Lake worth, texas.—

(A) Demonstration project.—The Administrator shall undertake a demonstration project to remove silt and aquatic growth from Lake Worth, Tarrant County, Texas, including constructing silt traps and providing other devices or equipment to prevent and abate the further deposit of sediment in Lake Worth. Such project shall also provide for the use of dredged material in the reclamation of despoiled land. The Administrator may take such other actions as may be necessary to carry out such project.

(B) REPORT.—Upon completion of the demonstration project, the Administrator shall submit a report on such project, along with recommendations of further measures to improve the water quality of Lake Worth, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(C) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $1,750,000 to carry out this paragraph.

SEC. 26. NPDES PERMITS.

(a) PERMIT REQUIREMENTS.—

(1) TERMS.—Section 402(b)(1)(B) is amended to read as follows:

"(B) are for fixed terms not exceeding five years, or for a fixed term not exceeding ten years in any case in which the State determines (in accordance with guidelines established by the Administrator) that the applicant has consistently complied with any permit held by such applicant under this section and that—

"(i) pollutants described in subparagraphs (C), (D), and (F) of section 301(b)(2) are not detectable in the effluent to which the permit will apply; or

"(ii) such pollutants are present in such effluent only in trace amounts and are neither causing nor are likely to cause toxic effects, alone or in combination with pollutants from other sources;".

(2) COMPLIANCE WITH NEW TOXIC LIMITATIONS AND WATER QUALITY STANDARDS.—Section 402(b)(1) is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following:

"(D) in the case of any permit issued for a fixed term exceeding five years, must be modified promptly to ensure compliance with any new or revised effluent limitation under section 307(a) of this Act or any new or revised requirement pursuant to a standard under section 303 of this Act which limitation or requirement is more stringent than the existing effluent limitation or requirement in the permit or which controls a pollutant not controlled in the permit; and".

(b) EXEMPTION FROM PERMIT OF CERTAIN STORMWATER RUNOFF.—Section 402(l) is amended by inserting "(1)" after "(l)" and by adding at the end thereof the following new paragraph:

"(2) The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly

require any State to require such a permit, for discharges of stormwater runoff from mining operations or oil or gas exploration, production, processing, or treatment operations, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated with process wastes, overburden, raw materials, toxic pollutants above natural background levels, spilled product, hazardous substances, or oil or grease. Any person discharging stormwater runoff described in the preceding sentence shall monitor the quality of water in such flows and shall report not less often than annually to the Administrator on the results of such monitoring.".

(c) ADDITIONAL PRETREATMENT OF CONVENTIONAL POLLUTANTS NOT REQUIRED.—Section 402 is amended by adding at the end thereof the following new subsection:

"(m) ADDITIONAL PRETREATMENT OF CONVENTIONAL POLLUTANTS NOT REQUIRED.—To the extent a treatment works (as defined in section 212 of this Act) which is publicly owned is not meeting the requirements of a permit issued under this section for such treatment works as a result of inadequate design or operation of such treatment works, the Administrator, in issuing a permit under this section, shall not require pretreatment by a person introducing con-

ventional pollutants identified pursuant to section 304(a)(4) of this Act into such treatment works other than pretreatment required to assure compliance with pretreatment standards under subsection (b)(8) of this section and section 307(b)(1) of this Act. Nothing in this subsection shall affect the Administrator's authority under sections 307 and 309 of this Act, affect State and local authority under sections 307(b)(4) and 510 of this Act, relieve such treatment works of its obligations to meet requirements established under this Act, or otherwise preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.".

(d) PARTIAL PERMIT PROGRAM.—Section 402 is amended by adding at the end the following:

"(n) PARTIAL PERMIT PROGRAM.—

"(1) STATE SUBMISSION.—The Governor of a State may submit under subsection (b) of this section a permit program for a portion of the discharges into the navigable waters in such State.

"(2) MINIMUM COVERAGE.—A partial permit program under this subsection shall cover at a minimum administration of a major category of the discharges into the navigable waters of the State or a major component of the permit program required by subsection (b).

"(3) APPROVAL OF PARTIAL PERMIT PROGRAM.—The Administrator may approve a partial permit program covering administration of a major category of discharges under this subsection if—

"(A) such program represents a complete permit program and covers all of the discharges under the jurisdiction of a department or agency of the State; and

"(B) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b).

"(4) APPROVAL OF PARTIAL AND PHASED PERMIT PROGRAM.—The Administrator may approve under this subsection a partial and phased permit program covering administration of a major component (including discharge categories) of a State permit program required by subsection (b) if—

"(A) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b); and

"(B) the State submits, and the Administrator approves, a plan for the State to assume administration by phases of the remainder of the

State program required by subsection (b) by a specified date not more than five years after submission of the partial program under this subsection and agrees to make all reasonable efforts to assume such administration by such date.".

(e) RETURN OF STATE PERMIT PROGRAM TO ADMINISTRATOR.—

(1) IN GENERAL.—Section 402(c) is amended by adding at the end thereof the following new paragraph:

"(4) A State may return administration of its permit program to the Administrator, and the Administrator may withdraw approval of a State permit program under paragraph (3) of this subsection—

"(A) in the case of any approval under subsection (n)(3), the entire permit program being administered by the State department or agency at the time of such return or withdrawal, as the case may be; or

"(B) in the case of any approval under subsection (n)(4), any phased component of the permit program approved at the time of such return or withdrawal, as the case may be.".

(2) TECHNICAL AMENDMENT.—Section 402(c)(1) is amended by striking out "as to those navigable waters" and inserting in lieu thereof "as to those discharges".

SEC. 27. AUDITS.

Section 501(d) is amended by inserting at the end thereof the following new sentences: "For the purpose of carrying out audits and examinations with respect to recipients of Federal assistance under this Act, the Administrator is authorized to enter into noncompetitive procurement contracts with State audit organizations. Such contracts may only be entered into to the extent and in such amounts as may be provided in advance in appropriation Acts.".

SEC. 28. COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.

(a) DEFINED AS A STATE.—Section 502(3) is amended by inserting "the Commonwealth of the Northern Mariana Islands," after "Samoa,".

(b) DEFINED AS PART OF UNITED STATES.—Section 311(a)(5) is amended by striking out "the Canal Zone," and inserting in lieu thereof "the Commonwealth of the Northern Mariana Islands,".

SEC. 29. AGRICULTURAL STORMWATER DISCHARGES.

Section 502(14) (relating to the definition of point source) is amended by inserting after "does not include" the following: "agricultural stormwater discharges and".

SEC. 30. REPORTS TO CONGRESS.

Section 516 is amended by adding at the end thereof the following new subsections:

"(f) DAM DISCHARGE STUDY.—The Administrator, in cooperation with interested States and Federal agencies, shall study and monitor the effects on the quality of navigable waters attributable to the impoundment and discharge of water by dams. The results of such study, together with any recommendations for the control of such impoundment and discharge, shall be submitted to Congress not later than December 31, 1986.

"(g) STATE REVOLVING FUND REPORT.—

"(1) IN GENERAL.—Not later than February 10, 1990, the Administrator shall submit to Congress a report on the financial status and operations of Water Pollution Control Revolving Funds established by the States under section 220 of this Act. The Administrator shall prepare such report in cooperation with the States, including water pollution control agencies and other water pollution control planning and financing agencies.

"(2) CONTENTS.—The report under this subsection shall also include the following:

"(A) an inventory of the facilities that are in significant noncompliance with the enforceable requirements of this Act;

"(B) an estimate of the cost of construction necessary to bring such facilities into compliance with such requirements;

"(C) an assessment of the availability of sources of funds for financing such needed construction, including an estimate of the amount of funds available for providing assistance for such construction through September 30, 1999, from the Water Pollution Control Revolving Funds established by the States under section 220 of this Act;

"(D) an assessment of the operations, loan portfolio, and loan conditions of such Funds;

"(E) an assessment of the effect on user charges of the assistance provided by such Funds compared to the assistance provided with funds appropriated pursuant to section 207 of this Act; and

"(F) an assessment of the efficiency of the operation and maintenance of treatment works constructed with assistance provided by such Funds compared to the efficiency of the operation and maintenance of treatment works constructed with assistance provided under section 201 of this Act.".

SEC. 31. NEWTOWN CREEK, NEW YORK.

(a) MODIFICATIONS TO TREATMENT PLANT.—The Administrator is authorized to make a grant to the city of New York to install such additional facilities in, and make such modifications to, the Newtown Creek sewage treatment plant as are necessary for the plant to provide secondary treatment. The Federal share of such project shall be 75 percent of the cost of installing such facilities and making such modifications.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to carry out this section for fiscal years beginning after September 30, 1985. Such sums shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.

SEC. 32. SAN DIEGO, CALIFORNIA.

(a) PURPOSE.—The purpose of this section is to protect the economy, public health, environment, surface water and public beaches, and water quality of the city of San Diego, California, and surrounding areas, which are endangered and are being polluted by raw sewage emanating from the city of Tijuana, Mexico.

(b) CONSTRUCTION GRANTS.—Upon approval of the necessary plans and specifications, the Administrator is authorized to make grants to the Secretary of the Army, acting through the Chief of Engineers (hereinafter in this section

referred to as the Secretary), or any other Federal agency o any other appropriate commission or entity designated by the President. Such grants shall be for construction of a project consisting of—

(1) treatment works in the city of San Diego, California, to provide primary or more advanced treatment of municipal sewage and industrial waste from the city of Tijuana, Mexico; and

(2) a publicly owned treatment works in such city to provide primary or more advanced treatment of such amount of municipal sewage and industrial waste for such city of San Diego as may be necessary to meet the objectives of the Federal Water Pollution Control Act.

(c) INTERIM MEASURES.—As an interim measure, the Administrator shall make grants to the Secretary or such other agency, commission, or entity as may be designated under subsection (b) for the construction of defensive treatment works to protect residents of the city of San Diego and surrounding areas from pollution resulting from any inadequacies or breakdowns in wastewater treatment works and systems in Mexico. The Secretary or such agency, commission, or entity is authorized to construct, operate, and maintain such defensive treatment works in order to accomplish the purposes of this section.

(d) APPROVAL OF PLANS.—Any treatment works for which a grant is made under this section shall be constructed in accordance with plans developed by the Secretary or such agency, commission, or entity, in consultation with the city of San Diego, and approved by the Administrator to meet the construction standards which would be applicable if such treatment works were being constructed under section 201 of the Federal Water Pollution Control Act.

(e) CAPACITY OF PROJECT.—The project authorized by this section shall provide capacity to provide treatment of municipal sewage and industrial waste for the cities of Tijuana and San Diego.

(f) APPLICABILITY OF ACT.—All provisions of the Federal Water Pollution Control Act which are applicable to a grant made to a State, municipality, or intermunicipal or interstate agency under section 201(g) of such Act shall apply to a grant made to an agency, commission, or entity for construction of treatment works under subsection (b)(2) of this section, except that the non-Federal share of the costs of such construction shall be paid by the city of San Diego and other non-Federal interests.

(g) FEDERAL SHARE.—Construction of the treatment works under subsections (b)(1) and (c) of this section with respect to municipal sewage and industrial waste from the city of Tijuana shall be at full Federal expense less any costs

paid by the Government of Mexico as a result of agreements negotiated with the United States.

(h) Ocean Outfall Permit.—Upon application of the city of San Diego, the Administrator may issue a permit under section 402 of the Federal Water Pollution Control Act which modifies the requirements of section 301(b)(1)(B) of such Act to permit the discharge of pollutants for any ocean outfall constructed with Federal assistance under this Act if such pollutants have received primary or more advanced treatment. Any permit issued pursuant to this subsection shall not be effective after December 31, 1993.

(i) Extra Capacity.—If the treatment works constructed under this section to provide treatment for municipal sewage and industrial waste from the city of Tijuana has capacity which is no longer necessary to provide such treatment, such capacity may be used to provide treatment for municipal sewage and industrial waste for the city of San Diego.

(j) Definitions.—For purposes of this section, the terms "construction" and "treatment works" have the meanings such terms have under section 212 of the Federal Water Pollution Control Act.

(k) Authorization of Appropriations.—There is authorized to be appropriated for fiscal years beginning after September 30, 1985, such sums as may be necessary to the

Administrator to make grants under this section and such sums as may be necessary to the Secretary, or such other agency, commission, or entity as the President may designate under subsection (b), to carry out this section.

SEC. 33. NACO, ARIZONA.

(a) PURPOSE.—The purpose of this section is to protect the economy, public health, environment, and surface water and groundwater of the community of Naco, Arizona, which are endangered and are being polluted by raw sewage emanating from the city of Naco, Sonora, Mexico.

(b) CONSTRUCTION GRANTS.—Upon application of the county of Cochise, Arizona, the Administrator shall make grants to such county for construction of a project consisting of—

(1) a publicly owned treatment works in such community of Naco, Arizona, to provide primary or more advanced treatment of not less than 150,000 gallons of untreated sewage emanating from the city of Naco, Sonora, Mexico; and

(2) a publicly owned treatment works in such community of Naco, Arizona, to provide primary or more advanced treatment of such amount of municipal sewage and industrial waste per day for such community of Naco, Arizona, as may be necessary to meet the objectives of the Federal Water Pollution Control Act.

(c) APPROVAL OF PLANS.—*Any treatment works for which a grant is made under this section shall be constructed in accordance with plans developed by the county of Cochise, Arizona, and approved by the Administrator to meet the construction standards which would be applicable if such treatment works were being constructed under section 201 of the Federal Water Pollution Control Act.*

(d) CAPACITY OF PROJECT.—*The project authorized by this section shall provide capacity to provide treatment of municipal sewage and industrial waste for the city of Naco, Sonora, Mexico and the community of Naco, Arizona.*

(e) APPLICABILITY OF ACT.—*All provisions of the Federal Water Pollution Control Act which are applicable to grants made under section 201(g) of such Act shall apply to grants made under this section to provide treatment of municipal sewage and industrial waste for the community of Naco, Arizona.*

(f) FEDERAL SHARE.—*The Federal share of the cost of construction of the treatment works to provide treatment of municipal sewage and industrial waste for the city of Naco, Sonora, Mexico, shall be at full Federal expense less any costs paid by the Government of Mexico as a result of agreements negotiated with the United States.*

(g) EXTRA CAPACITY.—*If the treatment works constructed under this section to provide treatment for municipal*

sewage and industrial waste for the city of Naco, Sonora, Mexico, has capacity which is no longer necessary to provide such treatment, such capacity may be used to provide treatment for municipal sewage and industrial waste for the community of Naco, Arizona.

(h) DEFINITIONS.—For purposes of this section, the terms "construction" and "treatment works" have the meanings such terms have under section 212 of the Federal Water Pollution Control Act.

(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator $2,000,000 to make grants under this section for fiscal years beginning after September 30, 1985.

SEC. 34. LIMITATION ON DISCHARGE OF RAW SEWAGE BY NEW YORK CITY.

(a) IN GENERAL.—

(1) NORTH RIVER PLANT.—If the wastewater treatment plant identified in the consent decree as the North River plant has not achieved advanced preliminary treatment as required under the terms of the consent decree by August 1, 1986, the city of New York shall not discharge raw sewage from the drainage area of such plant (as defined in the consent decree) into navigable waters after such date in an amount which is greater for any 30-day period than an amount equal

to 30 times the average daily amount of raw sewage discharged from such drainage area during the 12-month period ending on the earlier of the date on which such plant becomes operational or March 15, 1986 (as determined by the Administrator), except as provided in subsection (b).

(2) RED HOOK PLANT.—If the wastewater treatment plant identified in the consent decree as the Red Hook plant has not achieved advanced preliminary treatment as required under the terms of the consent decree by August 1, 1987, the city of New York shall not discharge raw sewage from the drainage area of such plant (as defined in the consent decree) into navigable waters after such date in an amount which is greater for any 30-day period than an amount equal to 30 times the average daily amount of raw sewage discharged from such drainage area during the 12-month period ending on the earlier of the date on which such plant becomes operational or March 15, 1987 (as determined by the Administrator), except as provided in subsection (b).

(b) WAIVERS.—

(1) INTERRUPTION OF PLANT OPERATION.—In the event of any significant interruption in the operation of the North River plant or the Red Hook plant

caused by an event described in subparagraph (A), (B), or (C) of paragraph (5) occurring after the applicable deadline established under subsection (a), the Administrator shall waive the limitation of subsection (a) with respect to such plant, but only to such extent and for such limited period of time as may be reasonably necessary for the city of New York to resume operation of such plant.

(2) INCREASED PRECIPITATION.—In the event that the volume of precipitation occurring after the applicable deadline established under subsection (a) causes the discharge of raw sewage to exceed the limitation under subsection (a), the Administrator shall waive the limitation of subsection (a) with respect to either or both such plants, but only to such extent and for such limited period of time as the Administrator determines to be necessary to take into account the increased discharge caused by such volume of precipitation.

(3) VARIATIONS IN CERTAIN NORTH RIVER DRAINAGE AREA DISCHARGES.—In the event that an increase in discharges from the North River drainage area constituting a violation of subsection (a)(1) is due to a random or seasonal variation, and that any sewer hookup occurring, or permit for a sewer hookup grant-

ed, after July 31, 1986, is not responsible for such violation, the Administrator shall waive the limitation of subsection (a)(1), but only to such extent and for such limited period of time as the Administrator determines to be reasonably necessary to take into account such random or seasonal variation.

(4) VARIATIONS IN CERTAIN RED HOOK DRAINAGE AREA DISCHARGES.—In the event that an increase in discharges from the Red Hook drainage area constituting a violation of subsection (a)(2) is due to a random or seasonal variation, and that any sewer hookup occurring, or permit for a sewer hookup granted, after July 31, 1987, is not responsible for such violation, the Administrator shall waive the limitation of subsection (a)(2), but only to such extent and for such limited period of time as the Administrator determines to be reasonably necessary to take into account such random or seasonal variation.

(5) CIRCUMSTANCES BEYOND CITY'S CONTROL.—The Administrator shall extend either deadline under paragraph (1) or (2) of subsection (a) to such extent and for such limited period of time as may be reasonably required to take into account any—

(A) act of war,

(B) unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight, or

(C) other circumstances beyond the control of the city of New York, except such circumstances shall not include (i) the unavailability of Federal funds under section 201 of the Federal Water Pollution Control Act, (ii) the unavailability of funds from the city of New York or the State of New York, or (iii) a policy decision made by the city of New York or the State of New York to delay the achievement of advanced preliminary treatment at the North River plant or Red Hook plant beyond the applicable deadline set forth in subsection (a).

(c) PENALTIES.—Except as otherwise provided in subsection (b), any violation of subsection (a) shall be considered to be a violation of section 301 of the Federal Water Pollution Control Act, and all provisions of such Act relating to violations of such section 301 shall apply.

(d) CONSENT DECREE DEFINED.—For purposes of this section, the term "consent decree" means the consent decree entered into by the Environmental Protection Agency,

the city of New York, and the State of New York, on December 30, 1982, relating to construction and operation of the North River and Red Hook wastewater treatment plants.

(e) COOPERATION.—The Administrator shall work with the city of New York to eliminate the discharge of raw sewage by such city at the earliest practicable date.

(f) SAVINGS CLAUSE.—Nothing in this section shall be construed as modifying the terms of the consent decree.

(g) SENSE OF CONGRESS.—It is the sense of Congress that the Administrator should not agree to any further modification of the consent decree with respect to the schedule for achieving advanced preliminary treatment.

(h) TERMINATION DATES.—

(1) NORTH RIVER PLANT.—The provisions of this section shall remain in effect with respect to the North River drainage area until such time as the North River plant has achieved advanced preliminary treatment (as defined in the consent decree) for a period of six consecutive months.

(2) RED HOOK PLANT.—The provisions of this section shall remain in effect with respect to the Red Hook drainage area until such time as the Red Hook plant has achieved advanced preliminary treatment (as defined in the consent decree) for a period of six consecutive months.

(i) MONITORING ACTIVITIES.—The Administrator shall establish and carry out a program within available funds to implement the monitoring activities which may be required under subsection (a) by December 1, 1984.

(j) ESTABLISHMENT OF METHODOLOGIES.—The Administrator shall establish the methodologies, data base, and any other information required for making determinations under subsection (b)—

(1) for the North River drainage area (as defined in the consent decree) by July 31, 1986, unless the requirements of subsection (h)(1) have been satisfied, and

(2) for the Red Hook drainage area (as defined by the consent decree) by July 31, 1987, unless the requirements of subsection (h)(2) have been satisfied.

(k) VIOLATIONS.—In carrying out this section, if the Administrator finds that a violation of subsection (a) has occurred, the Administrator shall also determine, within 30 days after such finding, whether a provision of subsection (b) applies. If the Administrator requires information from the city of New York in order to determine whether a provision of subsection (b) applies, the Administrator shall request such information. If the city of New York does not supply the information requested by the Administrator, the Administrator shall determine that subsection (b) does not apply. The city of New York shall be responsible only for such expenses

as are necessary to provide such requested information. Enforcement action pursuant to subsection (c) shall be commenced at the end of such 30 days unless a provision of subsection (b) applies.

SEC. 35. DEER ISLAND TREATMENT PLANT, MASSACHUSETTS.

(a) EMERGENCY IMPROVEMENTS.—The Administrator is authorized and directed to make grants to the Metropolitan District Commission, Massachusetts, for a project to undertake emergency improvements at the Deer Island Waste Water Treatment Plant in Boston, Massachusetts. The Federal share of such project shall not exceed 75 percent of the cost of carrying out such improvements.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $10,000,000 per fiscal year for each of the fiscal years 1986, 1987, and 1988.

SEC. 36. OAKWOOD BEACH AND RED HOOK PROJECTS, NEW YORK.

(a) RELOCATION OF NATURAL GAS FACILITIES.—Notwithstanding any provision of the Federal Water Pollution Control Act, the Administrator shall pay, to the extent provided in appropriation Acts, in the same proportion as the Federal share of other project costs, all expenses for the relocation of facilities for the distribution of natural gas with respect to the entire wastewater treatment works known as the

Oakwood Beach (EPA Grant Numbered 360392) and Red Hook (EPA Grant Numbered 360394) projects, New York.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal years beginning after September 30, 1985, not to exceed $9,000,000 to carry out this section.

SEC. 37. CHIPPEWA TOWNSHIP, PENNSYLVANIA.

In order to protect the public health, environment, and water quality endangered by the destruction of the Chippewa Township, Pennsylvania, sewage treatment facility and the resultant raw sewage discharge into Brady's Run and the Beaver River, Pennsylvania, the Administrator is directed to remove such raw sewage.

SEC. 38. DES MOINES, IOWA.

(a) AUTHORITY TO MAKE GRANTS.—The Administrator is authorized to make a grant to the city of Des Moines, Iowa, for construction of the Central Sewage Treatment Plant component of the Des Moines, Iowa, metropolitan area project. The Federal share of such project shall be 75 percent of the cost of construction.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section not to exceed $85,000,000 for fiscal years beginning after September 30, 1985. Such sums shall be in addition to and not in

lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.

SEC. 39. WASTEWATER RECLAMATION DEMONSTRATION.

(a) AUTHORITY TO MAKE GRANTS.—The Administrator is authorized to make a grant to the San Diego Water Reclamation Agency, California, to demonstrate and field test for public use innovative processes which advance the technology of wastewater reclamation and which promote the use of reclaimed wastewater.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated not to exceed $3,000,000 to carry out this section for fiscal years beginning after September 30, 1985.

SEC. 40. BOSTON HARBOR AND ADJACENT WATERS.

(a) GRANTS.—The Administrator shall make grants to the Massachusetts Water Resource Authority for purposes of—

(1) assessing the principal factors having an adverse effect on the environmental quality of Boston Harbor and its adjacent waters;

(2) developing and implementing a management program to improve the water quality of such Harbor and waters; and

(3) constructing necessary waste water treatment works for providing secondary treatment for the areas served by such authority.

(b) FEDERAL SHARE.—The Federal share of projects described in subsection (a) shall not exceed 75 percent of the cost of construction thereof.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $20,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990. Such sums shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.

SEC. 41. TREATMENT WORKS IN WASHINGTON STATE.

(a) AUTHORITY TO MAKE GRANTS.—The Administrator is authorized to make grants to the sewage treatment authorities discharging into Puget Sound and adjacent marine waters, including the Strait of Juan de Fuca and Bellingham Bay, to construct necessary treatment works for providing secondary treatment for the areas served by such authorities. The Federal share of such projects shall not exceed 75 percent of the cost of construction thereof.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $250,000,000 to carry out this

section for fiscal years beginning after September 30, 1985. Such sums shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the the Federal Water Pollution Control Act.

SEC. 42. IMPROVEMENT PROJECTS.

(a) AVALON, CALIFORNIA.—The Administrator shall make a grant of $3,000,000 from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of California for fiscal year 1986 to the city of Avalon, California, for improvements to the publicly owned treatment works of such city.

(b) WALKER AND SMITHFIELD TOWNSHIPS, PENNSYLVANIA.—The Administrator shall make grants from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of Pennsylvania for fiscal year 1986—

(1) to Walker Township, Pennsylvania, for developing a collector system and connecting its wastewater treatment system into the Huntingdon Borough, Pennsylvania, sewage treatment plant, and

(2) to Smithfield Township, Pennsylvania, for rehabilitating and extending its collector system.

(c) TAYLOR MILL, KENTUCKY.—Notwithstanding section 201(g)(1) of the Federal Water Pollution Control Act or any other provision of law, the Administrator shall make a

grant of $250,000 from funds allotted under section 205 of such Act to the State of Kentucky for fiscal year 1986 to the city of Taylor Mill, Kentucky, for the repair and reconstruction, as necessary, of the publicly owned treatment works of such city.

(d) WATSONVILLE, CALIFORNIA.—The Administrator shall make a grant of $27,000,000 from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of California for fiscal years beginning after September 30, 1985, to the city of Watsonville, California, for improvements to the wastewater treatment and disposal facilities of such city.

SEC. 43. STUDY OF REGULATION OF DE MINIMIS DISCHARGES.

(a) STUDY.—The Administrator shall study the feasibility and desirability of eliminating the regulation of discharges of pollutants into the navigable waters in amounts which, in terms of volume, concentration, and type of pollutant, are not significant.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Administrator shall submit a report on the results of such study along with recommendations to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

SEC. 44. STUDY OF EFFECTIVENESS OF INNOVATIVE AND ALTERNATIVE PROCESSES AND TECHNIQUES.

(a) EFFECTIVENESS STUDY.—The Administrator shall study the effectiveness on waste treatment of innovative and alternative wastewater treatment processes and techniques referred to in section 201(g)(5) of the Federal Water Pollution Control Act which have been utilized in treatment works constructed under such Act. In conducting such study, the Administrator shall compile information, by State, on the types of such processes and techniques utilized, on the number of facilities constructed with such processes and techniques, and a description of such processes and techniques which have not performed to design standards. The Administrator shall also determine which States have not obligated the full amount set aside under section 205(i) of such Act for such processes and techniques and the reasons for each such State's failure to make such obligations.

(b) REPORT.—Not later than two years after the date of the enactment of this Act, the Administrator shall submit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of such study, along with recommendations for providing more effective incentives for innovative and alternative wastewater treatment processes and techniques.

SEC. 45. WATER QUALITY IMPROVEMENT STUDY.

(a) STUDY.—The Administrator shall study the water quality improvements which have been achieved by application of best available technology economically achievable pursuant to section 301(b)(2) of the Federal Water Pollution Control Act. Such study shall include, but not be limited to, an analysis of the effectiveness of, and the costs and benefits associated with, application of best available technology economically achievable pursuant to such section and an analysis of the effectiveness of the water quality program under such Act and methods of improving such program, including site specific levels of treatment which will achieve the water quality goals of such Act in a cost-effective manner.

(b) REPORT.—Not later than two years after the date of the enactment of this Act, the Administrator shall submit a report on the results of the study conducted under subsection (a) together with recommendations for improving the water quality program and its effectiveness to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

SEC. 46. STUDY OF TESTING PROCEDURES.

(a) STUDY.—The Administrator shall study the testing procedures for analysis of pollutants established under section 304(h) of the Federal Water Pollution Control Act. Such study shall include, but not be limited to, an analysis

of the adequacy and standardization of such procedures. In conducting the analysis of the standardization of such procedures, the Administrator shall consider the extent to which such procedures are consistent with comparable procedures established under other Federal laws.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Administrator shall submit a report on the results of the study conducted under this subsection, together with recommendations for modifying the test procedures referred to in subsection (a) to improve their effectiveness, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(c) BIENNIAL REVIEWS.—Biennially after the date of submission of the report under subsection (b), the Administrator shall conduct a state-of-the-art review of the test procedures for the analysis of pollutants referred to in subsection (a) for the purpose of determining the adequacy and effectiveness of such procedures and shall, based on the results of such review, submit to the committees referred to in subsection (b) recommendations for modifying such procedures to improve their effectiveness.

SEC. 47. STUDY OF PRETREATMENT OF TOXIC POLLUTANTS.

(a) STUDY.—The Administrator shall study—

(1) the adequacy of data on environmental impacts of toxic industrial pollutants discharged from publicly owned treatment works;

(2) the extent to which secondary treatment at publicly owned treatment works removes toxic pollutants;

(3) the capability of publicly owned treatment works to revise pretreatment requirements under section 307(b)(1) of the Federal Water Pollution Control Act;

(4) possible alternative regulatory strategies for protecting the operations of publicly owned treatment works from industrial discharges, and shall evaluate the extent to which each such strategy identified may be expected to achieve the goals of this Act; and

(5) the adequacy of Federal, State, and local resources to establish, implement, and enforce multiple pretreatment limits for toxic pollutants for each such alternative strategy.

(b) REPORT.—Not later than two years after the date of the enactment of this Act, the Administrator shall submit a report on the results of such study along with recommendations for improving the effectiveness of pretreatment requirements to the Committee on Public Works and Transportation

of the House of Representatives and the Committee on Environment and Public Works of the Senate.

SEC. 48. SULFIDE CORROSION STUDY.

(a) STUDY.—The Administrator shall conduct a study of the corrosive effects of sulfides in collection and treatment systems, the extent to which the uniform imposition of categorical pretreatment standards will exacerbate such effects, and the range of available options to deal with such effects.

(b) CONSULTATION.—The study required by this section shall be conducted in consultation with the Los Angeles City and County sanitation agencies.

(c) REPORT.—Not later than one year of the date of the enactment of this Act, the Administrator shall submit a report on the results of the study, together with recommendations for measures to reduce the corrosion of treatment works, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $2,000,000 to carry out this section for fiscal years beginning after September 30, 1985.

SEC. 49. PULP MILL STUDY.

(a) FEASIBILITY STUDY.—The Administrator, in consultation with the State of Alaska, shall conduct a study to determine the feasibility of resolving the air pollution control,

solid waste disposal, water quality standards compliance, and energy impacts associated with the achievement of best practicable technology under section 301 of the Federal Water Pollution Control Act with respect to the Alaska Lumber and Pulp Company, located at Sitka, Alaska (NPDES permit numbered AK000053-1).

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Administrator shall submit a report on the results of the study conducted under subsection (a) to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

SEC. 50. STUDY OF RAINFALL INDUCED INFILTRATION INTO SEWER SYSTEMS.

(a) STUDY.—The Administrator shall study problems associated with rainfall induced infiltration into wastewater treatment sewer systems.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Administrator shall submit to Congress a report on the results of such study, along with recommendations on reasonable methods to reduce such infiltration and on regulatory mechanisms to address special problems associated with increased flows from such systems resulting from such infiltration.

SEC. 51. STUDY OF pH IN DISCHARGES FROM MINING OPERATIONS.

(a) STUDY.—The Administrator shall study effluent limitations as they relate to pH in discharges from mining operations.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Administrator shall submit to Congress a report on the results of such study along with the recommendations as to the feasibility of permitting modifications of such effluent limitations to permit lower pH in such discharges than is otherwise required.

SEC. 52. STUDY OF POLLUTION IN LAKE PEND OREILLE, IDAHO.

(a) COMPREHENSIVE STUDY.—The Administrator shall conduct a comprehensive study of the sources of pollution in Lake Pend Oreille, Idaho, and the Clark Fork River and its tributaries, Idaho, Montana, and Washington, for the purpose of identifying the sources of such pollution. In carrying out this subsection, the Administrator shall consider existing studies, surveys, and test results concerning such pollution.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Administrator shall submit to Congress a report on the results of the study conducted under this section together with any recommendations of the Administrator.

(c) EDUCATION PROGRAM.—The Administrator shall make the report under subsection (b) available to the public and shall carry out such education programs as the Administrator deems appropriate for the purpose of making the public aware of the results of the study conducted under subsection (a) and the recommendations contained in such report.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section for fiscal years beginning after September 30, 1985, such sums as may be necessary.

SEC. 53. LIMITATION ON PAYMENTS.

No payments may be made under this Act except to the extent provided in advance in appropriation Acts.

SENATE DEBATE ON S. 1128

June 12 and 13, 1985

(Congressional Record, vol. 131, part 11, 15301-15326, 15615-15678)

CLEAN WATER ACT AMENDMENTS OF 1985

Mr. **STAFFORD.** Mr. President, I ask unanimous consent that the Senate now turn to the consideration of S. 1128, the clean water bill.

The **PRESIDING OFFICER.** Is there objection?

Mr. **MOYNIHAN.** Mr. President, I object.

The **PRESIDING OFFICER.** Objection is heard.

Mr. **STAFFORD.** Mr. President, I move that the Senate proceed to the consideration of S. 1128, the clean water bill.

The **PRESIDING OFFICER.** The question is on agreeing to the motion.

Mr. **MOYNIHAN** addressed the Chair.

The **PRESIDING OFFICER.** The Senator from New York.

Mr. **MOYNIHAN.** Mr. President, may I ask our distinguished, wholly admired chairman how he would like to proceed? As he knows, there are a number of Senators who would otherwise be very much in support of this measure—I guess the Senator from Rhode Island may be one of them—under other circumstances would be wholly in support of the measure, but who are not because of the change in the allocation formula for sewage treatment facilities which came unexpectedly and without the kind of notice and comity which the Committee on Environment and Public Works has, I think, prided itself in. We have been a committee that rarely is divided excepting where there are issues of fact where we cannot resolve them among ourselves. We have characteristically brought measures to the floor unanimously.

We have not done that in this case. We want to hear about it. We do not want to prolong this matter, or anything like that. The distinguished chairman knows our disappointment. In 8½ years in this body, I have never found myself in opposition, that I am aware of, with matters of the committee. I would, however, like to ask the subcommittee chairman how he would like to proceed.

Mr. **CHAFEE.** I would like to proceed. I would like to take up the bill. If we have some problems, we can have votes on them after we discuss them. There are some amendments the distinguished ranking member and I have been working together on and our staffs have. I would like to get to this.

As the Senator from New York has pointed out, it is important to the Nation. We have not just the clean water amendments dealing with the quality of the water, but there are certain grants involved, $2.4 billion.

I know the Senator from New York was disappointed. He indicated that when we had the markup in the committee. I understand that he and the Senator from Minnesota have an amendment. Let us get to it when the time comes to take it up.

Mr. **MOYNIHAN.** If the distinguished chairman will allow me, I have a statement which I would like to make. I take no pleasure in this at all. I feel disappointed, and I feel that a practice in the Committee on Environment and Public Works, which has been valuable, which is worth preserving, has been needlessly damaged. These matters could have been resolved in an open manner, but they were dealt with in a way that was less than open. The outcome was a division among friends, friends not just at the level of traditional relationships but persons who joined this committee to advance the purposes of environmental protection and public works, and who have done so with some considerable success since the early 1970's.

Mr. President, if not for one provision of the Clean Water Act Amendments of 1985, I could enthusiastically support this bill. The Clean Water Act is a cornerstone of our national environmental programs establishing as it did an effective strategy for improving the quality of the Nation's surface waters. With this strategy, we have used our vast technological capabilities to reduce pollution from domestic and industrial waste waters.

The quality of our streams and lakes has improved significantly in the years since passage of the Federal Water Pollution Control Act of 1972. Federal, State, and local agencies spent $56 billion for sewage treatment between 1972 and 1982, and this mammoth investment proved worthwhile. The commissioner of the New York Department of Environmental Conservation reported to me that pollution from municipal sewage in New York fell by nearly two-fifths in a decade. Many rivers and lakes once pronounced "dead" now thrive. The chief water pollution problems of the past—waterborne disease and oxygen depletion—are largely under control, and the work will continue.

This bill would expand the efforts and address additional pollution problems. In addition to authorizing funding to the Environmental Protection Agency for ongoing programs, the bill would strengthen existing law in several important ways. One of the most important sections of S. 1128 would require pollution control efforts beyond the mandated "best available technology," if such extraordinary efforts are necessary to meet water quality standards and control the release of toxic pollutants. I also support a major provision directing the States to implement controls on nonpoint source pollution, or runoff from farms, urban streets, and other diffuse sources.

Unfortunately, the bill is at this time unacceptable to me, because the committee changed the allocation formula for sewage treatment construction grants in ways that are both unwise and unfair. The new formula would reduce grants to 18 States, most of them the populous, urban States of the East and Midwest. Every State bordering on the Great Lakes would face at least a 19-percent reduction in funding.

This is especially unwise and unfair, as many of these same States have long been neglected by Federal water programs generally. Between 1956 and 1980, only 1.2 percent of water resources expenditures by the Corps of Engineers, Bureau of Reclamation, Tennessee Valley Authority, and Soil Conservation Service went to New York. The Environmental Protection Agency's Construction Grants Program has been more equitable. The new formula threatens this equity.

The new formula was drafted to transfer grant resources from populous to small States, and from the East and Great Lakes regions to the South and West. The formula relies on so-called eligible needs criteria to allocate the funds. No weight is given to combined sewer overflows, a major cause of water quality degradation in older urban areas. In 1981 Congress narrowed the list of project categories eligible for Federal funding but wisely provided Governors the discretion to use up to 20 percent of a State's allotment to correct combined sewer overflows. It makes no sense to use Federal funds for this vital type of work, while ignoring the same need in the allocation of the funds.

Equally improper is the classification of the 50 States into 3 arbitrary groups. Funding would be distributed to each group in a manner designed to favor small States with relatively low levels of need. One group, for example, consists of the 13 States with the lowest estimated needs. According to the 1984 EPA needs survey, this group collectively accounts for 3.7 percent of the eligible needs; but it would receive 8.5 percent of the grant funding.

The arbitrary character of the formula is further illustrated by the distribution of funds within each group. A different mathematical algorithm was used for each group. For some States, the share of funding is determined not by eligible needs, but by the cube of the logarithm of eligible needs. Why not the square, or the fourth power of the logarithm? It would make every bit as much sense—which is to say, none at all.

This radical change in the allocation of grant funds would seriously affect many major bodies of water. Perhaps most important, the change would significantly hinder efforts to improve water quality in the Great Lakes. In the Great Lakes Water Quality Agreement of 1978, the United States joined Canada in a commitment to control major sources of water pollution. This agreement set out specific goals for a wide range of pollutants and sources. For examples, the concentration of phosphorous in sewage treatment plant effluent must not exceed 1 milligram per liter. Equally important, the agreement requires each national to provide adequate funding to meet the water quality goals.

A General Accounting Office study in 1982 found that the United States is far from meeting its commitments under the 1978 agreement. According to the GAO, the United States is considerably behind schedule in providing adequate municipal waste water treatment in the Great Lakes basin. Further, little progress has been made toward controlling combined sewer overflows. As a result, eutrophication and toxic chemical pollution continue to plague the lakes. Progress would only be slowed further by the proposed new allocation formula, which would reduce grants to the Great Lakes States by $175 million annually.

Not long ago, Lake Erie was widely considered dead. Continued discharge of municipal and industrial sewage had caused a textbook example of a phenomenon called eutrophication. Nutrients in the sewage stimulated the growth of algae; as the algae died, settled to the bottom and decomposed, the lake was robbed of its oxygen. Only a few hardy species of fish could servive. Recently, however, the populations of such valuable species as trout, walleye, and whitefish have been increasing in Lake Erie, as sewage treatment and other measures have reduced discharges of nutrients.

Yet, major problems remain. Toxic substances are found in the water, sediments, and fish of all the Great Lakes. This problem is especially severe in Lake Erie, Lake Ontario, and the Niagara River, and is therefore a major concern in New York State. Efforts to further improve water quality are underway, and I would especially like to commend the recent efforts of the binational Niagara River Toxics Committee, with representatives from New York, Ontario, and the American and Canadian Governments. This committee published a report in October 1984 recommending an aggressive program to monitor and reduce pollution from sewage discharges, hazardous waste disposal sites, and other sources. It would be foolish to inhibit further progress on the lakes with grant reductions.

As with the Great Lakes, virtually the entire drainage area of Chesapeake Bay lies in States that would lose funding: Maryland, Virginia, West Virginia, Pennsylvania, and New York. The Environment and Public Works Committee recognized the unique character of the Great Lakes and Chesapeake Bay by authorizing in this bill modest programs to improve the management of those resources. But the damage done by the new formula would more than offset these benefits.

Our alternative formula would simply correct the major flaw of the formula approved by the Environment and Public Works Committee; the disproportionate share given to small States with low levels of needs. The group of 13 smallest States, which account for 3.7 percent of the Nation's fully eligible needs—according to the 1984 EPA needs survey—would receive 3.7 percent of the funds under our alternative, compared to 8.5 percent under the committee formula. The next seven smallest States have 6.1 percent of the needs, and we would give them 6.1 percent of the funds; the committee formula would give them 9 percent. Similarly, the 30 remaining States would receive the same share of the funds as their share of the needs, 90.3 percent.

Many of the 30 relatively large States, including my own State of New York, would lose up to 10 percent of their funding in comparison to current law. We would prefer to retain the formula specified by current law, but this alternative formula is clearly an equitable compromise.

If it were not for one provision of the Clean Water Act Amendments of 1985, I would enthusiastically support the bill. The Clean Water Act is the cornerstone of our national environmental program, established as an effective strategy for improving the quality of the Nation's surface waters.

It was no accident that the Clean Water Act came first, as the great source of environmental disease, not just of the 19th and 20th centuries, but through the history of reasonably densely populated societies has been waterborne. It took a long time for men to learn this. It was well into the mid-19th century before the waterborne quality of so much disease was understood. It was a dispute late into the 19th century, when there began to be the understanding that drinking water could be contaminated, that sewage systems could contaminate drinking water.

Mr. President, could we have order?

The PRESIDING OFFICER (Mr. STAFFORD). The Senator's point is well taken. The Senate will please be in order. Senators will please take their conversations to the cloakroom. The Senator is making an important statement and is entitled to be heard.

Mr. MOYNIHAN. Mr. President, the discovery of waterborne disease and the transfer of disease-causing organisms from sewage systems to drinking water supplies and the creation of sewage systems were the great events, as a matter of fact, in public health in the 19th century. It was with these advances that cholera and such diseases and gastrointestinal diseases were first understood and began to be suppressed and the life of man changed.

One only has to live in a society where water is not clean to understand the dimension of the issue involved. So it is altogether appropriate that one of the first major measures which the Congress enacted following the environmental concern that so flourished in the late sixties and early seventies was for clean water, both as a traditional measure of managing waste of various kinds, and, also, looking to the newer questions that were beginning to emerge as we discovered the consequences of runoffs of chemicals that come from agricultural uses and industrial uses.

As we found the great changes that were taking place in bodies of water so large as to have precluded such possibilities in ordinary circumstances, there was in the 1960's a great degree of concern over the prospect that Lake Erie might die. The proposition that a lake might die in the process of eutrophication became better understood. And, of course, in the long run, all lakes do eventually eutrophy over many millions of years, which is a very different time horizon than we found we had when we looked up and found the discharge of chemicals we had in one of the Great Lakes would likely kill life in that lake in a short time.

I recall, that 95 percent of the freshwater of the United States is stored in the Great Lakes. When we talk about a change in an allocation formula that directly affects the Great Lakes States of the United States, remember, we are talking about the single largest source of freshwater that was expected to be clean water in our country.

The great Chesapeake Bay is another such region. There are some 18 States in all that are adversely affected by this change, which we do not feel is made in an open way.

The quality of our streams and lakes has improved significantly in the years since passage of the Federal Water Pollution Control Act of 1972, which we call the Clean Water Act. Federal, State, and local agencies spent $56 million for sewage treatment between 1972 and 1982, and it shows. In my

State, the commissioner of the department of environmental conservation reports that pollution from municipal sewage in New York has fallen by nearly two-fifths in a decade and that many lakes, once thought dead or dying, are now thriving.

The chief water pollution problems of the past, which were, on the one hand, waterborne disease, of which I spoke earlier and, on the other hand, oxygen depletion, which takes place through the growth of vegetable organisms and the decomposition of sewage and other organic matter, are largely under control. But the work has to continue.

This bill would expand the efforts to address the additional pollution problems. In addition to authorizing further funding for the Environmental Protection Agency for ongoing programs, the bill would strengthen existing law in several important ways. One of the most important sections of S. 1128, which is what we have before us, would require pollution control efforts beyond the presently mandated "best available technology." If such extraordinary efforts are necessary to meet water quality standards and control the release of toxic effluents which are a different order of water contamination as against the disease contamination of previous efforts, I would certainly be for that. I cannot imagine a Member of this body who would not.

I would also support a major provision directing the States to implement controls on non-point-source pollution or runoff from farms, urban streets, and other diffuse sources.

Unfortunately, the bill is at this time unacceptable to many of us because the committee changed the allocation formula for sewage treatment construction grants in ways which we feel to be unwise and unfair and with little precedent in the procedures of our committee. I am especially disappointed in that as I value the procedures so. The new formula would reduce grants to 18 States, most of them the populous urban States of the East and Midwest. Every State bordering on the Great Lakes would face at least a 19-percent reduction in funding. Nineteen percent from the same sums of money, suddenly and with no notice, with no real hearing—we were presented at a committee hearing with the findings of a committee which has long been known for representation of the less populous States— to have this happen all of a sudden is a disappointment. It comes at a time when this Senator has been trying for 8 years to speak to this body, with no great success, asking, why have the water projects of the U.S. Government come to a halt?

Why is it that since 1970, there has not been, with small exceptions in 1974 and 1976, a water project bill. This Senator from New York was once chairman of the Committee on Water Resources. An Eastern Senator has rarely had that privilege, I believe—an Eastern Democrat. I got deeply involved in the obvious needs of this country in the West and the South and the Mississippi and the Ohio for water projects that have come to a halt. We cannot pass them any longer. The whole of the Carter administration came and went without one. The first term of President Reagan came and went without one.

One of the reasons—there are about three—is that many of the best prospects for water development projects, have already been used, and you begin to reach marginal opportunities as you keep going on, and those marginal opportunities have produced responses that are very negative in the form of environmental concern.

But, most importantly, there is no sharing. It is all hogging, and the hogging has become offensive and the result is a stalemate. If the West dries up, and if the South sinks, and if the Mississippi changes its course, and the Tenn-Tom does not turn out to have worked, there is not going to be as much concern elsewhere as there ought to be, thanks to events like this.

The Bureau of Reclamation in 18 States in the West has its acre-foot of water selling for one-tenth what the market would bring. Between 1956 and 1980, 1.2 percent of water resources expenditures by the Corps of Engineers, Bureau of Reclamation, Tennessee Valley Authority, and the Soil Conservation Service went to my State. The only area in which there was a relatively larger allocation was in the Environmental Protection Agency's construction grants for a uniquely urban form of activity—to wit, a new municipal sewer system and sewage treatment plant. It is not a very elegant subject and it changed the health of the industrial world when we first understood it.

And so now we come to this present impasse. I just wish to say, if you want to continue, so be it. This is not the end of the argument. This is just argument for stalemate protracted, and it will continue.

There are others on the floor who would like to speak, and I do not want to keep them from doing so. I will have more later.

Mr. CHAFEE. Mr. President, what is the parliamentary situation now?

The PRESIDING OFFICER (Mr. KASTEN). The pending question is the motion to proceed to the consideration of S. 1128.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I should like to make a fairly brief statement and then ask my friends from Rhode Island and Maine if they could give me some information. I am honestly seeking informaton on this bill. I have read the report and I have read the formulas. I have studied them, and I am troubled. I am troubled by some aspects of the change in the formula where many of our States are benefiting arbitrarily at the expense of others.

Now, I happen to know the Senator from Rhode Island and the Senator from Maine very well, and I do not know of two Senators that I hold in higher esteem than these two. I consider both literally to be my friends as well as my colleagues. I know they have two instincts, as we all do in this body, or at least I think all of us do, and one instinct is to represent our States to the best extent we can, and, two, an instinct for fairness. Sometimes they clash and we try to meld them the best we can. But when I look at this bill it just simply does not meet the test of fairness as I can determine it.

I want to ask my friends some questions because I believe they are instinctively, inherently, fair people who want to do the right thing. They also want to represent their States, and I understand that. But I also, again, genuinely believe they want to do the right thing.

I look at this bill, and basically what we start with is the following: We have the EPA determining each State's share of a national need. It is a given. The EPA tells us what the need is for each State, and they ascertain that need according to some objective criteria. I do not think anybody here is disagreeing with the EPA criteria or the committee's determination, because they accept that. The committee, as a matter of fact, described the survey of the EPA on page 57 of the report. They say:

> This survey, conducted by the Environmental Protection Agency with the cooperation of the States, is the most current, complete, and accurate determination available of the need for publicly-owned treatment works which can be assisted under titles II and VI of the act.

So the committee majority has put its imprimatur on the EPA survey as far as I can tell from this report, and I accept that survey. Although I might have had differences, I accept that survey as the basis of discussion.

Each State is assigned a share by the EPA. It is as objective an assessment as I think we can have. I do not have a better one. The committee does not have a better one. And so we all are given an EPA appraisal. Each State is given a share.

Let me give a couple of examples. Idaho. Idaho is given a share of the national need of 0.004. Massachusetts is given a share of 0.04, 10 times the need of Idaho.

To the best I can determine it, according to this objective assessment, Massachusetts has 10 times the need, probably more than 10 times the population. I do not have the population figures. But that is not the issue. The issue is that EPA has said Massachusetts has 0.04 percent of the national need, and Idaho has 0.004 of the national need, or one-tenth the need of Massachusetts. I do not think the committee is disagreeing with that fact. I am not. That is the basis of the discussion.

So how much money, then, does the committee recommend be provided under this formula to Idaho and Massachusetts? It provides $17 million to Idaho and $85 million to Massachusetts. Massachusetts gets five times the money, although, by our objective criteria, it has 10 times the need.

Another example—Maine and Florida: Maine, according to the EPA, has 0.005 share of the overall national need. Florida has 0.05—10 times the need of Maine. The State share of Florida is exactly—or as close as I can come to getting one that fits—10 times the need of Maine. It seems to me that, by a test of fairness, they should get 10 times the money if the EPA has determined that their share and their need is 10 times.

The committee has done something here for small States, something more than has ever been done, so far as I can determine. They have decided that they will take the smallest States and give them a larger share than they are entitled to under the EPA formula, and then create another tier of the next smallest group of States and give them more than they are entitled to under the EPA formula, and the rest of us basically are paying for it, with some wrinkles which I will get into in a few moments.

Again I emphasize: This is not a question of what is the share that each State has. The EPA has given us that. It is given for the committee, which puts its imprimatur on it, and I do not dispute it. I accept those shares for the purpose of this discussion. But then the committee says:

> We are going to create a tier 3, 13 States having less than half of 1 percent of the national need, and we are going to give those States about two times what they are entitled to according to that national-need formula.

When you add up their EPA shares, they come out to 3.7 percent of the national need, but the committee allocates 8.5 percent of the money to them. That is twice what their shares are. Thirteen States do awfully well. They do very well under current law, as well.

There is a flaw in current law, and I understand that. You are guaranteed at least one-half of 1 percent, and the committee has changed that. Instead of doing it that way, the committee has said:

> We are going to give these 13 States 8.5 percent of the money, although they only have 3.7 percent of the certified EPA need. Their EPA-certified allocated share is 3.7 percent, but we are going to give them 8.5 percent.

Under the present bill, by the way, they get 6.5 percent. That goes up to 8.5 percent.

Then the committee does something else. They create another tier, the next smallest States. There is nothing comparable to this in present law. They take the next seven States, which have between one-half of 1 percent and 1 percent of the national need, and guarantee them more than their share, according to the EPA allocation. Those seven States represent 6.1 percent of the national need. The committee gives them 9 percent of the money—about 50 percent more than they seemingly would be entitled to.

I know there are arguments to the effect that you have to have enough money in a State so that it can run a program. But I do not know of anything in the RECORD or anything in the committee report with any testimony relative to that. I accept that, by the way. I have no problem with making sure that a State gets enough so that it can run a project feasibly. But we are giving additional amounts of money to different States. We are raising the amount of money from the current level for the 13 smallest States.

There is nothing I can find in the RECORD which would justify these particular amounts of money for these States. There is no testimony that says Maine has to have a minimum of this amount of money so that it can run a project. It is done in an arbitrary way.

Twenty States benefit from those two particular tiers, and essentially the rest of us pay for it. There are some exceptions to that, because the committee has grandfathered 11 States to make sure we all get 80 percent of the current law. So there is a little benefit in there for 11 States.

The committee has done something else for five States. It has made sure that they get 1.25 percent of their total share, so that they do not get less than any of the States in tier 2.

However, the point is that we are deviating from the EPA allocated share. We are deviating from it more so than under current law. We are adding another tier of small States, and the rest of us are paying for it. The small States are not the weakest States. They are not the poorest States.

I would not have any problem, I say to my friend from Rhode Island, if part of this formula was to help the poorest among us, to help the ones with the smallest per capita income. That has all been worked into this EPA share. It has all been figured out, what the needs are of these communities. If the committee wants to add on that a per capita income one, let the cards fall where they may. We can debate that. But that is not the issue here.

We have an extraordinary situation, so far as I can tell, because here we have an allocated share by the agency in charge of administering this program, and the committee has said—and I am again going to quote the committee—that the survey is the most current, complete, and accurate determination available of the needs.

If we are going to deviate from that survey, we should have some demonstrable, legitimate reason for doing so. If it is shown here, or if there is testimony in a hearing record before the committee, that a certain number of millions of dollars are required in order for a project to be funded in a State and if we give it less, only one-tenth of a project will be funded—that reason is pretty compelling. But that is not what happened.

What happened is that the 8.5 percent of this pie was allocated to these 13 States, and then that was divided in a very complicated way, by mathematical formulas, among those 13 States. The same with the seven States. Nine percent of the pie was given to States with 6.1 percent of the need, and then the 9 percent was allocated among those States by an extremely complicated formula, to the best of my knowledge, without testimony as to what it would take to have a minimum project in Maine or Idaho.

I am not arguing here for a continuation of current law. Others will do that. What I am saying is that we have a fairness indicator. We are changing current law. Current law expires, and we are changing it. Current law is going to run out, as I understand it, at the end of this fiscal year. We are adopting a new law, and what I am pleading with my friends for—and I am going to ask the specific question—is fairness.

Maybe the smaller States in the Senate have the votes, and I presume they do. But I know you well enough to believe that you want to be fair and that you feel you are being fair, and that is what I am pleading for.

And I am pleading with this body that before we deviate from a standard norm, which is given to us and which we accept as being accurate, complete, and current, we have a justification for it.

My question is this, and I would be happy to address this to my friends from Rhode Island, Vermont, or Maine, how do we justify giving the smallest 13 States, with 3.7 percent of the agreed-upon need, 8.5 percent of the money? That is the first question.

I have a few other questions.

Mr. CHAFEE. Let me respond to the distinguished Senator from Michigan.

I think it is not possible to just look at this from 13 States. I think you have to look at where we were and what we are attempting to achieve overall.

As the Senator recalls, in 1981 the eligibility items for the Clean Water Act for the waste treatment grants were changed. No longer, for example, were combined sewer overflows included in the eligible categories. Nor were intercepts, nor were collectors, for example. So, therefore, a survey indicate was based on different factors than the old survey was based upon and it excluded those items which were changed in the 1981 law.

Now, in this survey, as we would expect, those States in the Southwest where you have the increased population, the growing population, are Arizona and Texas, for example.

Their needs dramatically increased, and so when those needs increased and you look at an overall pot of money which has remained constant, you are going to have some dramatic changes.

Now, as far as the smaller States go in a whole host of formulas that we have adopted in this Congress we have had a half-a-percent set-aside for each smaller State.

You can argue about this, but nonetheless we have had it even though the needs of a particular State might be less than a half-percent, just as we have had set-asides of *x* percentage for Guam and American Samoa, and whatever it is.

So once we got into this, we found that if you just allocated the money solely on the basis of need there would be some dramatic swings.

For example, New York would have gone down way more than it went down.

Then we had an 80 percent hold harmless in here for the larger States. That changes the amount that is eligible for others.

For example, if Texas were just given strictly what it was entitled to under the formula, Texas would have gone up considerably more than it did. But when you put in a hold harmless—maybe you should not have a hold harmless, but we felt that for a State to drop precipitously from where it was, namely, 100 percent, down to 70 percent or 60 percent, would be traumatic for that State. They have certain planning they have embarked on.

When we went into this program in 1981 we set forth with the administration's support that there would be $2.4 billion for *x* number of years out in the future and that would be the funding for the program. So these States had made certain plans. You can argue with whether the hold harmless should be there or not but we felt it was.

We wanted to take care of New York. New York would have gone down, as I said, more precipitously.

The Southwest growth States were represented ably, and they indicated sure, they would like more, and they went up some.

But to take them to their fullest extent there just would not have been the money available.

Now you get to the smaller States. You say they are only entitled to 2.6 percent, and they got 8.5 percent.

Mr. LEVIN. 3.7.

Mr. CHAFEE. Pardon?

Mr. LEVIN. 3.7.

Mr. CHAFEE. 3.7.

That is excluding the 1.5 percent that we have traditionally given them and indeed we did go up some from that.

That was based on a whole variety of criteria, one of which is the necessity to have the legislation passed, to be frank, and the amount of money involved was very, very small.

I do not think anyone would get up on this floor and say they are not entitled to the half of a percent.

Some a little bit above that was allocated. But in dollars I do not think it is significant in the overall picture of $2.4 billion.

I know the distinguished ranking minority member of the committee had some thoughts on this, and we would be glad to pursue it further when the times comes.

Mr. MITCHELL. I thank the chairman.

The distinguished Senator from Michigan has raised what I believe are relevant questions. But we have to recognize at the outset that there is no simple objective manner by which to measure fairness. The Senator used the word repeatedly throughout his remarks and his question. Fairness like beauty is often in the eyes of the beholder.

For example, this program has been in operation for 13 years and during that time the Great Lakes hydraulic region which includes parts of seven States and the entire State of Michigan has received more money on a per capita basis than has any other part of the country—$351 for each person living in that region. By contrast, a part of Texas has received an average of $99 per person living in that region.

Many people could have looked at that at any point during the past 13 years and said that is not fair, that one standard by which we ought to measure the effect of this program is what does it do on a per capita basis, which is as we all know one of the most common means for devising allocation formulas.

The Senator from Michigan understandably did not at any time during that period protest the operation of the formula as being unfair. Nor did anyone else even though it produced widely divergent results in various parts of the country.

The Senator has referred to the needs survey by the Environmental Protection Agency as a method of allocation or as an allocation. It should be clear that the EPA in this report has not and has never proposed a method of allocating funds. What it has done at the direction of Congress has been to conduct an assessment, a survey of what needs exist in the country for publicly owned waste water treatment facilities to achieve the objectives of the act.

What qualifies as eligible for inclusion in this survey has changed from time to time.

Generally, the law has become more restrictive, as we have seen, as Congress has seen that the scope of the program, the scope of the problem was so broad that we were unable to include all of what might otherwise have been deemed needs in each survey, and this survey that we are now referring to, the 1984 needs survey report to Congress, reflects a significant difference from the prior surveys not only with respect to where growth has occurred and, therefore, needs might be anticipated to increase, using a constant standard, but in significant part because the method, the criteria for determining what is eligible to be included as a need has changed so the standard is different.

As the Senator from Rhode Island indicated, some types of projects that were considered eligible to be included in the previous needs survey were not included in this because we determined we could not possibly do that and we wanted to target our resources in the places most appropriate.

That meant that the statement of needs differs from previous statements of needs in those two important respects and if we were to say that we ought to follow that statement in the allocation of formula in prescribing the formula for the allocation of funds, we would have rather sharp swings in several of the State programs, including dramatic reductions in some and significant increases in others.

Now, remember, if the Senator will, that this is a program that has been going on for 13 years that the administration proposes to terminate and that the committee proposes to continue for a limited period and then to convert into a State Revolving Loan Fund Program. So we are talking about winding up a program over a period of some 5 or 6 years. And the question is, particularly when faced with an important deadline of compliance in the summer of 1988, how you enable States to do that in a rational manner.

From the standpoint of pure logic, it is indisputable that the Senator is correct in saying if you just take the statement of need and allocate funds on that basis, that is the fairest way to do it. Some would say, "Well, wait a minute. We have not been doing that for 13 years. As a result, Michigan has got $2.1 billion under the program, a lot more per capita than other people have." Why now do we seek to adhere to a pure standard?

We have to work in other factors, the foremost of which is to modify the variations in the program to permit States to continue with viable programs. That is the principal objective of both the hold harmless and the tier system to which the Senator referred.

Now, it is without any question an imperfect result, far less imperfect in my judgment than the alternative which will be proposed here which has a much more specific and narrow objective, but nonetheless it is imperfect. But it had as its objective, and in my judgment achieves it, at least in rough form, to moderate the radical changes in the size of the program in each State that would result from following the pure needs survey and to do it in a manner that allows the smaller States to continue with the viable program particularly as they face the deadline of July 31, 1988.

And, so, first, we adopted a hold harmless that says that no State will get less than 80 percent of the amount that it previously had, notwithstanding any other provision. The alternative formula, which is to be proposed, provided a 90-percent hold harmless for some States and no hold harmless for other States. If we want to talk about fairness—and that is relative, too; we are not talking about the committee formula in the abstract, we are talking about what the alternatives are—what could be less fair than that, to say, instead of everybody getting an 80-percent hold harmless, some States get a 90-percent hold harmless and other States get none whatsoever?

The second mechanism was the tier system, which did in fact carry through the provision that has been a part of this law from the beginning that recognized that for a smaller State to have a viable program it needs a minimum amount of money in view of the large size of some of these projects. That was formerly expressed in the floor of one-half of 1 percent for each small State. It is now expressed in the tier mechanism, which the Senator rightly suggests gives them more than they would receive if we followed the strict needs bases. And the level that was adopted, 8.5 percent for the first category, the first tier category of several smaller States is inevitably an arbitrary number, but one which reflected the committee's judgment that that is the level best calculated to achieve the objective of permitting those States to continue with a viable program, to enable them to complete the programs as necessary prior to the deadline.

I do not suggest to the Senator that that is irrefutable logic, that it is purely an objective standard that one has to agree or disagree with. You could say, Why not 7.5 percent? Why not 9.5 percent? But every day in this body we make such judgments and they are relative judgments. I do not for a moment question the force and persuasiveness of the Senator's argument, but everything we do here represents that.

The formula that is going to be proposed as an alternative, which I assume the Senator supports, makes similar judgments, reflecting the different interests of the Members offering it but similar in the respect that they require some method of making a final determination.

So we decided that, for the reasons suggested, the allocation formula that the committee adopted best represents the needs of the larger part of the country. Fair? That is up to each individual Senator to make a judgment on, just as one could look, as I pointed out, at the previous 13 years and say that was not fair.

We thought it was. We provided it. It provided very large sums of money to some parts of the country and not to others. My statement was one that benefited from it. But it was an expression of what we felt the best way to meet these needs was in a difficult, complex area.

Mr. LEVIN. Mr. President, relative to the past, I say to my friend from Maine—I am going to be brief because there are others on the floor who want to speak as well—I presume when these formulas were adopted that this Senate felt they were fair and this Congress felt they were fair and the committee felt they were fair. I am not going to go back now, unless we want to spend literally weeks doing this, and debate whether or not the current formula, when it was adopted, was perceived as being fair. It was based on an assessment of need. It is the only lodestar we have. There is not any other way to know what is fair, except to look at the EPA determination of what the needs are in each State. As a matter of fact, that is what we give the EPA the task to do. Why in Heaven's name are we asking the EPA to assess the needs of the States unless we view this as objective and fair?

Again, the committee seems to have accepted this. There is nothing else that the committee is proposing to us as to what the needs are except the survey which the committee says is the most current, complete, and accurate determination available of the needs. That is what we start with.

Now, my friend from Maine says we want to avoid wide swings. Fine. Provide for wide swings. But why is Texas getting less than it should get under this formula? They are a lot better than they are under current law, and I understand that. But why does Texas get less than its need or its proportion of the need? Why does it get 80 percent or 90 percent of the need and some States get 200 percent of what the need is assessed by the EPA?

That is what is happening. I am afraid that that is exactly the predicament that we are all in. I am not going to go into what other programs provide States and water bills and so forth because I do not think that is relevant. What is relevant is if we are going to deviate from a formula we ought to have a justification for it. I have heard none except that you have got to exercise some judgment.

We will give the smallest 13 States 8.5 this year instead of 6.5. Why? It is the best judgment of the committee. Based on what? And who is paying for it? We are paying for it.

And then there is another tier of States you are adding. Why? The next seven smallest States. They total 6.1 percent of need. They are getting 9 percent. That has never happened before.

My friend from Rhode Island has talked about a traditional ½ of 1 percent. And that has been traditional, but that is not what we are providing now. You are providing for that to the smallest 13 States and then you are adding another tier that are above ½ of 1 percent of the national need. The second tier was between ½ of 1 percent and 1 percent. That is another group of States. I guess we call them the second smallest group of States. Who is paying for that arbitrary 9 percent when they should be getting 6.1, according to the EPA assessment, which we have asked them to do and which we say is the most current and most accurate assessment of need? Who is paying for it? The rest of us.

The rest of us are paying for it. It is new. It is new in this bill. This is not the traditional half of 1 percent in tier 2. It is a new group of seven States. My friend from Rhode Island as usual is extremely candid. He says, "Well, you need it to get the votes. We had to get a bill passed." I appreciate his candor. I have always appreciated his candor, his friendship, his integrity, and I always will. But when you look at this formula from the perspective of those of us that are on the losing end of it, we have to say why new formulas now?

I am going to close my comments at this point by simply saying that if there is any record, any hearing record which says that these 20 States that benefit from tier 2 and 3 need specific amounts to keep current projects going or close them, hey, you have my support. I have been at the other end. I have been at local government. I know what the Federal Government can do, and that they do not know what they are doing to local government. I know how arbitrary the Federal Government can be when it closes projects down in the middle, and does not fund enough to finish the project. I am all for doing the sensible thing. It happens all the time. They did not give us the data. It takes X number of million in Idaho to finish a project, and it takes X number of million in Maine to finish a project. Give us a hearing record and let us do the sensible thing. That may very well provide deviation from the EPA standard. I would be the first one to vote for it because again I have been at the other end of this, too, when the Federal Government has acted arbitrarily. I do not want to act arbitrarily. I am afraid we have a new formula for tier 3 now getting 8.5 percent of the money instead of 6.5 percent of the money, although they only have 3.7 percent of the need. Now we add another tier, tier 2. Several States that have never gotten special treatment are now getting special treatment. There is no logic offered for that. When the rest of us have to pay for it, I have to say, "Hey, let's be fair, now."

I cannot go back to the 1961 bill and 1977 bill and the 1979 bill. I was not here for most of them. I do not think any of us really want to go back to those debates. I think all of us at the time felt it was fair. I think all of us ought to feel now that this is fair. Many of us do not.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Mr. MITCHELL. I will make a brief comment. Then I will be glad to yield the floor to the Senator from New York.

The first point to be made is that the allocation formula has never merely reflected the needs survey. There have always been adjustments to achieve various objectives, the principal one being the one I described earlier. They were fairly complicated. They were the result of committee Senate action, committee House action, and conferences. The second point is the Senator says who is going to pay for the tier 1 States going from one level to another? And he says that it is not fair that the other States pay for it. Just prior to that, however, the Senator said he favors hold harmless.

Mr. LEVIN. If the Senator will yield, no. I did not. I said if the committee wants to consider a hold harmless provision, that is the committee's judgment to do that.

Mr. MITCHELL. Does the Senator favor or oppose hold harmless?

Mr. LEVIN. I think you can make a reasonable argument for a hold harmless provision. You can also make a reasonable argument against it. But you cannot make a reasonable argument for—it seems to me, in answer to your question—adding a new tier of States to benefit arbitrarily that have not done so before, and adding more benefits to the tier that has existed before the so-called tier 3 States. I cannot see any justification. I can see arguments pro and con on the hold harmless.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, this new formula was brought to my attention by my staff and by some of my colleagues. As I began to make some inquiries of staff as to how and why this formula is justified—and there are those who are far more knowledgeable in the calculation and presentation of this formula—it became apparent that at least to the eyes of this beholder that fairness would have appeared to escape as the essential ingredient in determining what the formula should be.

That need on the part of the individual States as the prevalent test becomes merely an objective to get around and to deal with, and I must suggest that the committee has done so, and in a manner that will most likely guarantee the passage of the committee bill. So as I indicated to you, I have mixed thoughts. What does someone who is elected to represent his constituents, and yes, the body as a whole—this entire country—do when he or she feels that there is a situation that should be addressed? Especially when one sees as a practical matter that there was little chance of success in arguing fairness or need. As my colleague from Michigan has suggested, let us take a look at this formula and what it would do, the impact it will have. I am wondering whether or not we are moving ever faster into a period of time in our history when it really becomes, "Let us line up the votes on one side to accomplish our objective. If we have to change the formula to get two, three, four, of five additional States into the basket to gain their support." I do not know. I think probably it is kind of an easy thing for each and for any one of us, including this Senator, who wants to accomplish a good purpose for his or her constituents, and consequently can justify oneself, particularly if one has the ability and the power with which we can change a formula that will result in meeting the needs of ones particular constituents in a particular State, or two States, for that matter.

So that is my dilemma. I can count

votes. I understand a little better today than I did 4-plus years ago when I entered this body the leadership committee, what is attendant, and the power with respect to that. I appreciate it. I do not say it to degrade the Senator. I know unless we have the good offices of those who have helped or shaped or who brought this important bill before this body for consideration and seek to move it forward, and unless they undertake a review even at this 11th and a half hour, there is little likelihood that the outcome would be changed. Except, of course, if one were to do that which certainly does not endear us to out colleagues, certainly something that should be done very sparingly if at all—and that is not only to point out the differences of opinion with respect to the proposed legislation, but to do it in such a way as to attempt to keep that legislative initiative, no matter how important, from moving forward.

I must confess to you that I have mixed feelings with respect to whether or not I would use that prerogative which is, I believe, important to governance, particularly important to the rights and protecting the rights of the minority. I have come to the conclusion that I will attempt to make my point to let the process go on but not without saying to my colleagues that if we continue to do the business of the people by pitting section against section, small State against large State, power against those who may for a particular time or occasion not have it lined up to their advantage, I do not think we do the business of the people in a way that we can be proud of, and more importantly, in a manner which can bring about a great disservice to this body and to that which it stands for. We are a union of States that have come together in the Federlist system recognizing the responsibilities that we have not only to our own constituents in particular States, but to the body as a whole, and to the 50 States as a whole.

Let me suggest to you as I look at the formula and what it would do, that certainly, if we made no change, the changing times of this country should be reflected in an updated formula. Certainly, as the Senator from Michigan has spelled out, we understand the necessity of seeing to it that those smaller States have adequate resources to undertake, in certain cases, projects that would go far beyond their ability to fund, were they not to be granted special recognition due to the enormity of those problems and the limited resources that might be at the command of that State.

Mr. President, there is no way you can justify a 20-percent cut for any State, particularly the State of New York. We did not talk about 5 percent, 10 percent. We are talking about 20 percent. It is $53 million. There is no way that you can guarantee that the need of New York and its people will be constant. But certainly to suggest 20 percent as a reasonable cut I find impossible to justify.

Mr. President, I would simply ask that those who have the power to make the kinds of adjustments that others of my colleagues will suggest in legislative initiatives may not become bound in terms of pride, in terms of momentary victory, and would hopefully examine in the short time that remains between the debate on the presentation of this legislation and the consideration of other amendments examples of not only New York's dilemma but those of other States, and, more importantly, all of the people of this Union, and what the adoption of this legislation would mean.

I suggest a trend not emanating just from this body but maybe it has been historically part of our Government in the United States—pitting various region against region and big States against small States. I view that as something coming more into focus, something that I have seen on a number of occasions addressed here with tremendous and admirable restraint.

I cannot help but reflect on the day a colleague of mine, Senator DOMENICI of New Mexico, actually was the critical vote on the mass transportation funding bill, notwithstanding the fact that his State would have been enhanced. Because of the issue of fairness and the issue of equity he voted in such a way as to not come ahead with additional dollars and cents for his constituents, recognizing the need for fairness and equity.

Having dealt with my colleagues, having been privileged to do so here on the Senate floor and in committee, I suggest that I know my colleagues are capable of that same kind of vision, and I would hope even after the 11th and a half hour that there might be an accommodation that will take into consideration the points made by my distinguished colleague from Michigan and those which I have attempted in a most awkward way to put before this body.

Mr. RIEGLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. Mr. President, I want to start by acknowledging the comments of my colleague from New York who has just spoken, and my colleague from Michigan who has come forward this afternoon on this issue. It is a very important issue. Under normal circumstances I would give my wholehearted support to a bill which reauthorizes the Clean Water Act.

Since this program was enacted we have made important strides in improving water quality across the country. Lake Erie, which many had mourned as a dead lake, has been revived and once again supports aquatic life. So we can change things for the better even in extreme circumstances, such as that which I mentioned.

This kind of progress can and must continue. My colleagues and I who are speaking on this today feel compelled to address this legislation because of our concerns about the fairness of the proposed construction grants program formula and the impact which it would have on water quality across the country.

The reason that I am unable to support this particular bill at this time is that it greatly redistributes the limited funds available for building wastewater treatment facilities and changes that formula into what I consider to be unfair and unsound from the point of view of the broad national interest.

After all, we are here for the purpose of trying to have some degree of equity in these formulas across the country, and equity as it relates to need. But if we fail to do that, then in a sense we have not really done the job of protecting the water resources of the country in the way that we properly should. This is just a question of a politically advantaged State or region versus another. If we allow that to happen under some objective measure of need for facilities and for clean water activity, then, in fact, we short change the country as a whole and we will not have gotten the kind of mileage out of the dollar spent that I think we are obligated to do.

The formula which has been developed here, and which is in this legislation, is not fair. On its face it is not fair. I think it represents a manipulation of the wastewater treatment needs data in order to arouse sufficient support to spread this money in a way that necessarily must deprive a small number of larger States, including the State of Michigan and the other States which border on the Great Lakes.

As a matter of fact, those States, Michigan among them, bordering on the Great Lakes, are the States that have some of the most severe needs. It is obvious that anything that is done to fail to meet clean water requirements in the States that border the Great Lakes creates additional jeopardy to the Great Lakes themselves. Since the lakes provide by far and away the lion's share of the surface fresh water resources of the country as a whole, I think we ought to take very particular care with the Great Lakes, in the national interest, not just from the point of view of the States that are fortunate enough to border on the Great Lakes.

In respect to this funding change, there have been no hearings held to allow us to investigate the full impact of the committee's changes. That just does not makes sense. This is far too complex an issue. The ramifications cut too deeply for us to start to make major changes in formulas of this kind without having the benefit of the full hearing process where these questions could be examined and witnesses could have a chance to testify and we have an ability to really get into sharp focus the question of need and how we might move to meet that need.

It is my view, based on the analysis that I have done, that the cuts proposed here, cuts that would hit the States that particularly border the Great Lakes, would be very damaging to the Great Lakes. In fact, the committee is asking the eight Great Lakes States to absorb $156 million in cuts for the total region, or a cut of nearly 20 percent. Michigan alone, which touches four of the five Great Lakes, would lose more than $20 million. Yet in our State, we still have over 200 communities with substandard treatment. Without Federal money, at least four communities discharging directly into the Great Lakes will not be able to meet the statutory requirements for secondary treatment by 1988.

That simply is not something that is sound or something we ought to allow to happen. If communities have to find other sources of funding in order to meet the statutory requirement, it is going to cost the average homeowner in Michigan $52 a month in sewage costs alone. In another law, we are looking at tax deductions now, the State and local taxes, property taxes, and it is proposed they no longer be allowed as deductions against the Federal income tax. If that goes through, it is going to make it that much more difficult for local communities to raise any amount of money in any form of taxation to meet needs of this kind. So it becomes very important how we elect to distribute the national funds that are devoted to what is seen properly as a national problem.

I think we have to be scrupulously fair in matching limited national dollars to a national problem, but on the basis of need, some objective measure of need.

Mr. CRANSTON. Mr. President, will the Senator yield?

Mr. RIEGLE. Yes, Mr. President, I yield to the Senator from California.

Mr. CRANSTON. Mr. President, I want to say that I fully understand that smaller States need manageable enough sums so they can handle the costs of needed projects. The past formula that we have had has taken that into account.

It seems to me the change now proposed by the committee adds considerably more for the smaller States in a new three-tier system that works out in a way that is extremely unfair to some of the larger States.

Under the formula adopted by the committee, California stands to lose $180 million in Federal funds over a 5-year period. This would result in 15 California communities which need to build sewage treatment facilities not receiving funding. These communities would have received Federal funding under the current allocation formula which gives 7.29 percent to California, less than we would be entitled to on a per capita basis. The revised formula is based on needs in the core treatment categories. This hurts California because it does not take into account significant needs in San Francisco to correct combined sewer overflow problems. These projects are necessary to meet the enforceable requirements of the Clean Water Act.

Additionally, just in terms of what the general formula proposals would do, the revised formula increases funding to 32 States which, as of April 1, 1985, have unobligated fiscal year 1985 grant fund balances averaging 68 percent. Ten of the States that would receive increased funding under the new formula have unobligated fiscal year 1985 grant fund balances of 90 to 100 percent. Moreover, many of the benefited States have not obligated all of their fiscal year 1984 funds. California, on the other hand, has obligated 83 percent of its fiscal year 1985 Federal funds and essentially all of its fiscal year 1984 funds. It seems grossly unfair to transfer grant funds from rapidly moving States such as California to States with high percentages of unobligated funds.

I ask the Senator from Michigan, what do we do about this?

Mr. RIEGLE. Mr. President, I think what we do is find a way and means to alter this formula. There may be more than one suggestion as to how that ought to be done, but the Senator raises an important role. I think in the search for some better answer than the one that is before the Senate, some means has to be found to address the kinds of problems that we see in States that border on the Great Lakes, just as the issue that the Senator from California raises as it would affect his State, I think, also needs to be addressed.

I am left with the thought that we are not ready as things now stand to move ahead on this legislation; there are unresolved issues such as we are discussing, and until they are adequately attended to and incorporated in some reasonable way into a formula that makes sense across the country, we are really not ready to proceed.

Mr. CRANSTON. Mr. President, I am glad that the two Senators from Michigan and the two Senators from New York are concerned, and I shall be glad to work in tandem with them to try to find some way to achieve a fairer and more equitable solution that takes into account the smaller States but also recognizes the need for dealing in fairness with the larger States.

Mr. RIEGLE. Mr. President, I agree with the Senator from California. It will take some time to find an answer and a purely local answer cannot be found.

Let me take just one moment to address the specific dangers to the Great Lakes States.

In his testimony before the Governmental Affairs Subcommittee a few weeks ago, EPA Assistant Administrator Henry Longest gave tribute to the importance of the Great Lakes in our country. He pointed out, for example, that the Great Lakes is the largest body of fresh water in the world. The Great Lakes comprise 95 percent of the United States' supply of surface fresh water and 20 percent of the world's supply of fresh water. That is an absolutely astonishing fact, one that we tend to take for granted but one of enormous long-term strategic importance to our Nation. It is very important that the Great Lakes water supply be preserved and protected in the best possible form.

At present, there are some 45 million people who rely upon the Great Lakes for water, transportation, recreation, energy, and, not the least, enjoyment. Yet in spite of their size, the Great Lakes are very vulnerable to contamination. This is well known. Scientific information bears this out. So for this reason, we cannot afford to ignore the very real need to take action to protect the water quality of the Great Lakes.

In fact, I am grateful to the committee for recognizing this important need by including a Great Lakes title in the bill. But the inclusion of the title is not adequate compensation by any means for the huge reduction in funding for wastewater treatment facilities in areas that border on the Great Lakes, which are in fact the most important means we have for controlling the flow of pollutants into the Great Lakes. We want to prevent that and we need to be in a position to prevent that as the States that border on the Great Lakes.

In a sense, we are the most immediate trustees of the Great Lakes in terms of the quality of the water because we adjoin the Great Lakes. Our colleagues must help us be in a position to respond as good stewards of that precious national resource to see to it that we are able to maintain and certainly not diminish the water quality in the Great Lakes. The stewardship that falls to us because of our immediately adjacency is not something that we can meet solely by ourselves if we are going to find a national clean water formula being tilted in such a way that we are not able to have a fair share of the resources to meet an obligation that we have to carry out for the whole country and where the stakes for the future of the whole country are very much involved.

This is not a special-interest pleading. We are talking about something here that is probably the most plain to see national resource in the way of water, fresh water, in this country as you can hope to find. This is, in a sense, almost the entirety of our surface fresh water in the country, 95 percent of it. Let us make sure, as a Senator or as a nation, that we are wise stewards in terms of making sure that we are protecting this absolutely critical resource.

We are not asking for a differentially larger amount, although I would think that we might be able to make an argument for that. We are saying no, let us have this formula divised on the basis of a more objective measure of need, and where the needs are let us match the money to the need because, in the end, that is what is going to serve the country better than anything else. The main fact is that we are not spending enough in this area. We are not moving ahead as fully as we should. We are obviously feeling the pinch of the budget constraints, as every area is, so that when we know we are not going to be able to do as much as we would like, let us make sure we are getting the maximum amount of protective result based on need for every dollar spent.

It is very important to recognize that we share this very important body of fresh water with the nation of Canada. In 1972 and again in 1978, the United States and Canada together signed a Great Lakes water quality agreement which required both countries to make a financial commitment to provide sewage treatment for those living in the Great Lakes Basin. In spite of a December 31, 1982, deadline for completing the municipally controlled programs to carry out those international understandings, much more remains to be done. The Construction Grants Program is currently the primary vehicle for meeting these international water quality obligations which we have undertaken with our neighbors to the north. It is important that those obligations be met. It is important as a matter of our national standing and our national word, but it is also important in terms of why we entered into these agreements in the first place, and that is to protect the water quality in this important area.

The Council of Great Lakes Governors has sent a letter to the committee opposing the proposed formula, pointing out that it will jeopardize the Great Lakes, will strain the Federal commitment to cleaning up the Great Lakes and worsen the imbalance in the return of Federal tax dollars to this region of the country where historically we have certainly not been fair-share participants. Mr. President, I ask unanimous consent to insert in the Record the letter from the Governors of the Great Lakes States written on June 7, to the chairman of the Environment and Public Works Committee.

There being no objection, the letter was ordered to be printed in the Record, as follows:

June 7, 1985.

Hon. Robert T. Stafford,
Chairman, Committee on Environment and Public Works, U.S. Senate, Senate Hart Office Building, Washington, DC.

Dear Mr. Chairman: We are writing in strong opposition to the recent action by the Environment and Public Works Committee to alter the Wastewater Treatment Grant allocation formula contained in the Clean Water Act reauthorization. The Committee's proposed formula cuts $175 million in essential grant funds from the Great Lakes Region in 1986 alone.

The waters of the Great Lakes not only provide 1 in 10 Americans with drinking water, but also represent an international resource. The Great Lakes Water Quality Agreement of 1978 between the United States and Canada recognizes our joint responsibility for proper stewardship of this water resource.

Through a combined effort with Canada, water quality in the Great Lakes basin has improved significantly. Today's wastewater treatment facilities form the centerpiece of that effort. Fulfillment of these reforms relies significantly upon federal responsibilities for wastewater treatment standards and construction as outlined in the Water Quality Agreement.

The Committee's proposed formula jeopardizes this vital resource. The proposed formula change will not affect the federal deficit. Rather, it is an attempt to reallocate funds which would sorely strain the federal commitment and support for the Great Lakes watershed and exacerbate the imbalance on the return of the federal tax dollar to this region of the country. We oppose this proposed formula in the strongest possible terms.

Sincerely,

Gov. James J. Blanchard, Gov. Richard F. Celeste, Gov. Mario M. Cuomo, Gov. Robert D. Orr, Gov. Dick Thornburgh, Gov. Rudy Perpich, Gov. Anthony S. Earl, Gov. James R. Thompson.

Mr. RIEGLE. Mr. President, I note that this letter is signed by Governors Blanchard, Celeste, Cuomo, Orr, Thornburgh, Perpich, Earl, and Thompson, so this is a substantial bipartisan list of Governors from those States indicating how strongly they feel about this issue and the plea that they have extended to us.

Before yielding the floor, Mr. President, I believe very strongly in the need for tough water pollution controls in this country, and I very much want to be able to support the Clean Water Act reauthorization, but the bill that has been reported out of the committee is simply unacceptable because it reduces protections for one of the most vital and on the face of this globe, most unique water resources that we have, namely the Great Lakes. So it would be very irresponsible not only for the Senate to take that action but doubly so for those of us adjacent to the area and who understand it to be a party to that kind of mistake.

I yield the floor.

Mr. STAFFORD. Mr. President, what is the pending business before the Senate?

The PRESIDING OFFICER. The question is on the motion to proceed to S. 1128.

Mr. STEVENS addressed the Chair.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. I suggest the absence of a quorum.

Mr. CHAFEE. I wonder if the Senator will hold up that request. It was my understanding the Senator from California was perhaps getting some of the folks together, and if he was going to do that we could use the time for opening statements.

Mr. CRANSTON. If I might just say briefly, a group who is concerned about this would like——

The PRESIDING OFFICER. Does the Senator from Alaska withhold his request?

Mr. STEVENS. For the time being.

Mr. CRANSTON. Those of us who have expressed some concerns and some others plan to meet at 4:15 to talk about what we can do in regard to the current situation and this formula. That meeting would not be a long meeting and we would come back to the floor as soon as possible.

Mr. MITCHELL. Does the Senator object to using the time for opening statements between now and then?

Mr. CRANSTON. No, we have no objection on the assumption there will be no action until we have a chance to talk and come back to the floor.

Mr. CHAFEE. I am prepared to agree that we allow the opening statements; that there will be no motion to proceed, we will not press the motion to proceed between 4:15 and when you get back, if you could be back around 4:45.

Mr. CRANSTON. Yes, we will do our best to be back before 4:45, possibly earlier.

Mr. STEVENS. Mr. President, just so there is no misunderstanding, this Senator has not begun to address the issue, and I would not suggest that we can name a time when we can proceed with the motion when negotiations are going on off the floor.

Mr. CHAFEE. Well, I do not know what negotiations are going on off the floor.

In the interim, let us get on with our opening statements. Mr. President, today we are attempting to consider S. 1128, the Clean Water Act Amendments of 1985. This comprehensive bill which deals with both the regulatory and construction grants provision of the law was developed with the support and able leadership of our full committee chairman, BOB STAFFORD; our full committee ranking member, LLOYD BENTSEN; and the Environmental Pollution Subcommittee ranking member, GEORGE MITCHELL.

Before I outline the contents of this legislation I would like to take a moment to discuss the progress the Nation has made under the Clean Water Act. Often in our zeal to push forward with strong environmental legislation we fail to recognize the achievements of the Environmental Protection Agency, State and local governments, public interest groups, and industry in abating pollution from our waters.

More than 10 years ago we were besieged with reports of fish kills in our lakes and rivers, beaches closed to swimming, algae and slime choking our waters.

Congress responded with the Clean Water Act in 1972 and in a relatively short period of time we have seen results. Fish have returned to many of our rivers and people are swimming where they have not swum for decades. By 1982 there were over 15,000 wastewater treatment plants in operation. The number of persons utilizing secondary or greater treatment increased 67 percent from 1972 to 1982, while population only increased 11 percent.

According to the Environmental Protection Agency's national water quality inventory report, substantial reductions have occurred in pollutants. Sewage treatment plants are removing about 13,600 tons per day of the two principal conventional pollutants—suspended solids and biochemical oxygen demand [BOD]—an increase of 65 percent over 1973 levels. In July 1977, 37 percent of the secondary plants required by the Clean Water Act had been completed and by June 1983 that number had risen to 69 percent.

According to EPA, six key industrial pollutants including phosphate, heavy metals and dissolved solids were reduced by more than half since 1973.

The EPA has reported a majority of the Nation's waters assessed in 1982 meet the interim Clean Water Act goal of fishable, swimmable waters. Thirty six States have reported specific improvements resulting from the construction of municipal wastewater, treatment facilities and 20 States reported improved water quality due at least in part to pollutant controls implemented by industry.

These trends are encouraging and demonstrate that the basic structure of the Clean Water Act is sound. Some of our more obvious and major pollution problems created by sewage treatment plants and unregulated discharges by industry are being solved. But, new more subtle problems must be addressed. These are problems of devasting toxic substances and pollution from nonpoint sources, such as runoff from farmlands and urban areas.

Although fish and shellfish communities are being reestablished in areas where they have been absent for decades because of the reduction of conventional pollutant loadings, hundreds of tons of toxic substances are being discharged into the Nation's waters each year from direct and indirect dischargers. It is indeed ironic that we must now warn people against consuming fish caught in many areas cleansed of conventional pollutants but which are contaminated by toxic pollutants to the point that they pose a potential health threat to those who eat them.

Toxic pollutants in water, fish tissue and bottom sediments can come from a variety of sources including industrial and municipal point sources and nonpoint sources. According to the EPA in 1982, 32 States cite water quality standards violations or use impairments due to toxic pollutants.

Although the structure of the Clean Water Act is sound and the program is working well, these amendments move us closer toward the fishable and swimmable waters goal of the act. Among other things the bill assures compliance with a strong water quality standards program and provides for greater control of toxic, conventional, and nonconventional pollutants. It establishes a new program to control pollution from nonpoint sources. It continues funding for the construction grants program at the current $2.4 billion level through fiscal year 1991 while establishing a revolving loan fund to ease the transition to full State and local sufficiency.

Now Mr. President I would like to outline the major provisions of S. 1128, the Clean Water Act Amendments of 1985. Members may refer to the committee report for a further detailed explanation.

The bill reauthorizes the regulatory provision under title I and the construction grants program under title II.

TITLE I

AUTHORIZATIONS

Section 101 of the bill reauthorizes a number of programs through 1989. The reauthorization levels are the same as the 1982 level.

Section 104(u)(1) of the Clean Water Act is amended to authorize $22,770,000 annually for such activities as research technical services, investigations, monitoring, and coordination.

Section 104(2) of the act is amended to provide $3 million annually for the manpower development training program. His program provides assistance to States and other entities to develop trained personnel to operate and maintain sewage treatment works.

Section 104(u)(3) is amended to authorize $1.5 million annually for the employment needs and forecasting program.

Section 106(a)(2) is amended to provide $75 million annually for grants to States and interstate agencies for programs for the prevention, reduction, and elimination of pollution, including implementing State delegated programs under sections 402 and 404 and enforcement directly through appropriate State enforcement officers or agencies.

Section 112(c), is amended to authorize $7 million per year for training grants and scholarships to institutions of higher education to assist them in carrying out programs for the preparation of undergraduate students to enter water quality control-related occupations.

Section 314(c)(2) is amended to authorize $30 million annually for grants to States for assistance in determining the eutrophic conditions of publicly owned freshwater lakes, ways of controlling pollution in those lakes, and methods of working with Federal agencies to restore lake water quality.

Finally $160 million per year is authorized for section 517 for carrying out the remaining provisions of the Clean Water Act.

SMALL FLOWS CLEARINGHOUSE

The act is amended so a portion of the funds set aside for innovative and alternative [I&A] technologies, but not obligated within the 2-year deadline, can be used to fund the Small Flows Clearinghouse. This clearinghouse was established under the 1977 amendments to collect and disseminate information on alternatives to traditional expensive community-wide sewage treatment systems, suitable for rural settings and individual or cluster application. The purpose of the clearinghouse is to assure the better utilization of the I&A set-aside money.

COMPLIANCE DATES

The Clean Water Act currently mandates that industry achieve effluent limitations based on best available control technology [BAT] for all toxic pollutants, and best conventional control technology [BCT] for all conventional pollutants no later than July 1, 1984. BAT for nonconventional pollutants must be achieved by 3 years after promulgation but no later than July 1, 1987.

These dates were enacted in the 1977 amendments with the expectation that the EPA would promulgate guidelines in a timely fashion for the 29 major industrial categories to be regulated. The Agency has not met this objective. Guidelines for only five categories still have to be promulgated.

Since the 1984 compliance deadline has passed and since EPA has not promulgated these guidelines according to schedule, this section amends the law to require compliance with BAT and BCT for all pollutants as expeditiously as practicable but not later than 3 years after promulgation of the effluent limitations, but in no case later than July 1, 1988. During our hearings in the Environmental Pollution Subcommittee we learned that most industries need about 3 years after promulgation of effluent limitation guidelines to design and construct the necessary control facilities.

In extending these compliance deadlines, the committee emphasizes that discharges are to comply with technology standards as expeditiously as practicable, regardless of the outside limits prescribed by this legislation.

New section 301(b)(3)(B) establishes compliance dates for effluent limitations based on the permit writer's best professional judgment under section 402(a)(1) of the act. BPJ limitations may be imposed either where effluent limitations guidelines under section 304(b) have not been established or where limitations in addition to the guidelines are necessary to control pollutants or waste streams not addressed by the guideline regulation. This section would not alter the compliance dates established in section 301(b)(2) for permit effluent limitations based on an effluent limitation guideline. In cases where the permit incorporates limitations based on both an effluent limitation guideline and additional limitations under section 402(a)(1), the compliance dates established in section 301(b)(2) would govern the guideline-based limitations and the compliance dates established in this subsection would govern the section 402(a)(1) limitations. In addition, it is often the case that a waste stream controlled by an effluent limitations guideline is combined with a process waste stream or a nonprocess waste stream, such as noncontact cooling water or sanitary wastes, controlled by BPJ limitations, prior to discharge. Where the discharged waste stream is controlled by a combination of both a guidelines based limitations and a BPJ limitation, the compliance dates established in section 301(b)(2) would govern.

OCEAN WAIVER

In the 1977 Clean Water Act amendments Congress enacted a provision that would allow publicly owned treatment plants [POTWS] in coastal communities to apply for waivers from uniform secondary treatment requirements. Those amendments contemplated that only a few POTW's with primary treatment capability discharging into deep unstressed waters would be eligible for these so-called ocean discharge waivers. Court decisions however blurred this intent and thereby encouraged many communities to apply for waivers. Now over 200 communities have applied for these waivers and have put their secondary treatment plans on the back burner—to the detriment of water quality—until EPA decides on their applications.

This bill clears up ambiguities and restates congressional intent to require communities not originally intended to qualify for waivers to meet secondary treatment requirements. The bill amends section 301(h) of the Clean Water Act so applications could only be approved if POTW's are at least at primary or equivalent treatment. In the absence of Federal categorical pretreatment standards, treatment works serving a population of 5,000 or more persons must be enforcing a comparable pretreatment program to insure the control of toxic pollutants at the time of application.

Additionally, conditions are placed on the characteristics of the offshore waters into which the applicant plans to discharge. Marine waters must exhibit physical and tidal characteristics which would assure sufficient flushing action to eliminate significant concentrations of municipal effluent discharged. The level of effluent concentration should not result at any time in a deleterious effect on the chemical or biological quality of marine waters or their uses.

No discharges should be permitted into saline estuarine waters which do not support a balanced indigenous population of shellfish, fish, and wildlife, or allow recreation in and on the waters, or do not meet applicable water quality standards or other standards necessary to support aquatic protection or recreational uses. This provision is intended to disallow effluent discharges into estuarine waters which have have been stressed by previous or existing pollution by other point and nonpoint discharges. The presence of a balanced indigenous population is to be determined by comparison with the shellfish, fish and wildlife population of an estuary of similar physical, tidal, and geographic characteristics.

MODIFICATION FOR NONCONVENTIONAL POLLUTANTS

The bill amends section 301(g) of the act to restrict the circumstances under which a modification from best available technology standards [BAT] can be granted for nonconventional pollutants. This provision is similar to one proposed by the administration.

Current law allows modification to BAT standards for nonconventional pollutants if, upon a showing by the discharger, such modification will result, at a minimum, in compliance with best practical treatment; will not result in additional requirements on point and nonpoint sources; and will not result in unacceptable risks to human health or the environment or interfere with the attainment or maintenance of water quality standards.

According to the EPA, scientific data on a great number of nonconventional pollutants are nonexistent or very limited. Also, the Agency's resources to make decisions on modification applications are inadequate. EPA has estimated that it takes between one-half and 2 years between 0.75 and 3.5 full-time employees; and between $20,000 and $50,000 to process a modification.

In the past, proposals for water quality based waivers for toxic and conventional pollutants have been rejected by the Congress. In many cases where information exists, nonconventional pollutants can be highly toxic to humans, fish and other aquatic organisms, and wildlife. Thus, nonconventional pollutants should be treated no differently from toxic or conventional pollutants, except in a very limited fashion. The amendment to section 301(g) allows modifications to BAT guidelines only for five well studied nonconventional pollutants—ammonia, chlorine, color, iron, and total phenols [4AAP]. EPA has developed adequate information on these pollutants as a result of currently pending applications for modifications from the iron and steel and steam-electric industries.

The Administrator may evaluate additional nonconventional pollutants and recommend to Congress that they be eligible for inclusion under section 301(g), but any such recommendations must be enacted by Congress to become effective.

The provision also limits to one year the time in which the Administrator can make a determination on a request for a modification under section 301(g)(4).

For pending requests, this provision is intended to restrict EPA's consideration to requests for modification to only those five nonconventional pollutants listed. Pending requests for modification for other nonconventional pollutants cannot be granted and, therefore, will not be acted upon. For completed applications pending at the time of enactment of the Clean Water Act Amendments of 1985, EPA must take final Agency action within 1 year of the date of submission of the completed application to EPA, the application will be deemed to be denied. This restriction applies specifically to completed applications as defined in EPA's regulations.

The provision also forbids the stay of any requirements or limitations for any pollutant other than for the pollutants for which a modification may be sought. Thus, if a discharger applies for a modification for chlorine, such application shall not, under any circumstances, stay the discharger's obligation to comply with the applicable effluent guideline which requires control of toxic, conventional or other nonconventional pollutants to meet the compliance deadline, nor may the Administrator or a State extend the compliance deadline for any applicant.

FUNDAMENTALLY DIFFERENT FACTORS

The bill authorizes the Administrator to grant fundamentally different factors [FDF] modifications under certain conditions.

A FDF modification is an administrative mechanism to provide an opportunity for relief from the application of national effluent limitations guidelines and standards for categories of existing sources for toxic, conventional, and nonconventional pollutants. EPA will write a separate effluent standard for an individual facility if the factors that govern standard setting are found to be fundamentally different at the individual facility from the factors considered in establishing the guideline or standards for the industrial category.

Presently the Agency, by regulation, has created an opportunity for FDF modifications from national categorical effluent standards for direct discharges for BPT, BAT, BCT and pretreatment standards.

EPA's authority to grant FDF modification has been challenged in several different courts. Recently, the Supreme Court held that the Clean Water Act does not prohibit the granting of FDF variances from pretreatment standards for existing sources of toxic pollutants.

As a result of this decision, EPA is issuing FDF modification without explicit statutory authority and without statutory definition of the conditions under which such modification may be issued. S. 1128 imposes additional restrictions, beyond those in the current FDF rules.

First, to be granted relief under section 301(n), a facility must be fundamentally different with respect to at least one factor, other than cost, specified in sections 304(b), 304(g), or 307(c) and considered by the Administrator in establishing the specific national effluent limitations guidelines and standards of concern to the facility. Cost may not be a factor upon which relief may be granted.

Second, applications for an FDF modification must be based solely on information and supporting data which have been submitted to the Administrator during the rulemaking process and which specifically raise the factors that are fundamentally different for the facility.

Third, the amendment specifies that the alternative requirement imposed on the applicant can be no less stringent than justified by the applicant's fundamental difference from the rest of the category or subcategory with respect to the statutory factors (other than cost) specified in section 304(b) or (g) of the act.

Fourth, if relief is granted, any alternative requirement shall not result in any nonwater quality environmental impact markedly more adverse than the impact considered by the Administrator in establishing the applicable national effluent limitations guidelines and standards.

An applicant for an alternative requirement must submit a complete application to the Administrator not later than 120 days after publication of the final effluent limitation guideline or categorical pretreatment standard in the Federal Register. The Administrator may not waive this deadline or extend it for submission of additional data.

The Administrator shall deny any application that is not complete, without providing for an opportunity for reapplication.

The burden for making the necessary showing in the application is entirely upon the applicant, not EPA.

This provision is included because many applications for FDF modifications have submitted very incomplete applications and have requested a stay of all applicable effluent standards pending disposition of the application.

After submission of a complete application, final EPA action must be taken within 240 days or the application will be deemed to be denied.

This timeframe is necessary to assure that a final decision on FDF application will not jeopardize the applicant's responsibilities to meet compliance deadlines for BAT, BCT, or categorical pretreatment standards, should the application be denied.

The bill also prohibits an application for alternative requirements from staying the facility's obligation to comply with the effluent limitations guideline or standard which is the subject of the application.

The availability of FDF applications is limited to primary industrial categories identified in permit regulations issued under section 402 of the Act as of the date of enactment of the Clean Water Act Amendments of 1985.

Because substantial Federal resources are being devoted to processing applications for modifications, the bill requires the Administrator to establish a system of fees to recover the cost of processing these applications. Applications should be accompanied by an appropriate fee and will be considered incomplete until the fee is paid.

Though the fees collected under this requirement will be deposited in the miscellaneous receipts of the Treasury, the EPA budget should provide resources for processing modification applications that reflect the fees received by the Treasury.

The Administrator may not delegate the authority provided by this subsection to any State, though the Administrator should obtain the concurrence of a State with an approved NPDES or pretreatment program before approving any alternative requirement under this subsection.

The Administrator is expected to use this authority only rarely and only to create a separate standard for a facility so unique that it would have required a separate subcategory had EPA given it adequate attention in the national rulemaking. The Administrator should first rely on the national rulemaking process to address the concerns of those who may seek an FDF modification.

WATER QUALITY-BASED EFFLUENT LIMITATIONS AFTER BAT

A cornerstone of the bill's new toxic pollution control requirement is the so-called beyond-BAT program.

Under a court order in 1976 and later incorporated into the Clean Water Act Amendments of 1977, EPA is required to issue regulations for best available control technology requirements [BAT] for major industrial categories to treat 65 classes of toxic pollutants. Some 57,000 facilities that directly discharge into waters are affected.

During the subcommittee's hearings in the last Congress and again in this Congress it was learned that BAT requirement may not go far enough in order to attain water quality standards in highly polluted waters. It has become clear that some water bodies have become so degraded that compliance with BAT and secondary treatment requirements will not necessarily assure the attainment of the water quality goals of the act. To remedy this situation, the bill contains provisions that institute additional controls. Modifications have been made to sections 302, 303, 304, and 305 of the act, which support the development of water quality based effluent limitations after the implementation of BAT and state water quality standards consistent with the goals and objectives of the act.

The bill amends section 305(c) to require that, within two years, States must identify water bodies in which toxics controls beyond BAT will be necessary. The bill also amends section 303(c) to require that water quality criteria be established in these waters, and adds to section 303(d) a mandatory duty for the States to establish effluent limitations, within 2 years after waters have identified, applicable to individual sources based on such criteria. Finally, section 302 has been amended to give EPA a mandatory duty to address these highly polluted waters—so-called toxic hot spot areas—and to refine the modification mechanism of that section.

Although EPA was required under a 1976 consent decree to develop a beyond-BAT strategy, it has only recently begun to identify toxic hot spot areas, let alone develop control strategies. Adopting the beyond-BAT provisions, will assure that EPA continues to move forward rapidly on this program.

The bill differs from EPA's current approach in that it requires toxics criteria developed by States be numerical rather than narrative. Narrative criteria, implemented through biomonitoring, may be successful in expeditiously identifying and limiting toxic discharges on a broad scale. These techniques can be useful, especially when trying to analyze complex effluents that contain a variety of toxic pollutants but where health concerns are not evident. However, in developing toxic criteria, EPA and the States cannot exclusively depend on narrative criteria as the primary means to combat toxic hazards.

Biomonitoring techniques have not yet been proven to be successful as regulatory tools because they are limited to aquatic life and there are still many unknowns about overall costs and enforceability. Therefore, S. 1128 authorizes EPA and the States to use toxicity based limits derived from biomonitoring techniques until the required numerical criteria can be developed.

As I mentioned before, EPA is focusing more on the biomonitoring approach in its present beyond-BAT regulatory scheme so changes will be necessary to make that scheme conform to the numerical criteria approach required in the bill.

Both EPA and the States are required to develop and enforce controls in highly toxic water bodies. Although the provisions of the bill require the States to take the lead in the beyond-BAT program, let it be very clear that the provisions also require EPA to take timely action to ensure that effluent limitations in hot-spot areas are developed within the time frames setforth in the bill. EPA should closely monitor the state's progress in identifying areas, developing areas, developing guidelines and carrying out responsibilities under section 303(d). If a state fails to meet the statutory deadlines in section 303(d) EPA must be prepared to move forward under the authority in section 302 to carry out its responsibilities.

If we are going to repair the damage to those water bodies that have become highly degraded as a result to toxic substances we are going to have to move forward expeditiously on this beyond-BAT program. The Nation cannot tolerate endless delays and negotiations between EPA and the States on this program. Both entities must move agressively in taking the necessary steps to make this program work within the timeframe established by the bill. Because of our keen interest in the timely success of the beyond-BAT program, the committee members expect to receive periodic progress reports from EPA to ensure that the requirements are being swiftly and fully implemented.

CIVIL AND CRIMINAL PENALTIES

Strong public support exists for aggressive enforcement action in cases of environmental misconduct.

The bill strengthens the enforcement provisions of the law by increasing the civil judicial penaly limit from $10,000 to $25,000 per violation, and clarifying that each distinct violation is subject to a separate daily penalty assessment of up to $25,000 and clarifying that violations of pretreatment program requirements are subject to civil penalties. The increase in the maximum daily penalty would make the Clean Water Act consistent with penalty limits under other environmental statutes and reflects the serious nature of these violations. In assessing penalties the courts must consider a number of factors, including, the economic benefit gained as a result of the violation. Violators should not be able to obtain an economic advantage vis-a-vis their competitors due to their noncompliance with environmental laws.

The Clean Water Act currently provides the Administrator with two civil enforcement options. When faced with a violation of the act, the Administrator may issue an order rquiring compliance or the Administrator may bring a civil action in the appropriate U.S. district court for penalties and injunctive relief.

The bill also gives the Administrator new authority to assess administrative civil penalties of up to $10,000 per day for each violation of a Clean Water Act requirement. Thus, a discharger who violated three daily maximum permit limits on a day could be subject to a maximum penalty of $30,000 for that day's violations. The total maximum administrative penalty that may be assessed under this provision is $125,000 for an individual enforcement action. This new authority is intended to complement and not to replace a vigorous civil judicial enforcement program.

First, this new authority is designed to address past, rather than continuing, violations of the act. Second, it includes a cap on penalty amounts and a lower daily limit than judicial penalties. These limitations are intended to assure that violations of greater magnitude are handled judicially and pursued in a judicial forum. Third, this new authority to administratively assess civil penalties sunsets after 5 years.

Prior to issuing an administrative order assessing a civil penalty, the Administrator must give the person against whom the penalty is to be assessed written notice of the proposed penalty and an opportunity to request, within 30 days of receipt of such notice, a hearing.

The Administrator is also required to provide the public with notice of the proposed penalty assessment and a reasonable opportunity to comment on the proposal. If a hearing on the proposed assessment is conducted, any citizen who commented on the proposal shall be given notice of such a hearing.

If a hearing on the proposed assessment is conducted, any citizen who commented on the proposal shall be given notice of such a hearing and a reasonable opportunity to be heard and to present evidence at the hearing. If no hearing is held, the Administrator must set aside the penalty order and provide a hearing when presented with evidence that the order was inadequate or improper.

An order assessing a penalty becomes final and nonappealable 30 days after its issuance or, in the case of a postassessment request for a hearing, 30 days following the final action by the Administrator.

The potential for overlap between citizen enforcement suits and administrative civil penalties is specifically addressed in the provision.

Judicial review of a penalty assessment is available to any person against whom a civil penalty order is issued as well as to any citizen who commented on a proposed assessment. Judicial review is not to be de novo review, but will be based upon whether the assessment of the penalty is an abuse of discretion. Where it is clear that the Agency has assessed such an unreasonably low penalty as to constitute an abuse of discretion, the court may choose to impose its own higher penalty rather than exercise its authority to remand. The bill would also elevate penalties for knowing violations of the act to the felony level and add criminal sanctions to the Clean Water Act for persons who knowingly or negligently introduce into a sewer system or a POTW, a pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage. Criminal liability shall also attach to any person who is not in compliance with all applicable Federal, State, and local requirements and permits and causes a POTW to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of the act.

The felony level penalties for knowing violations (not less than $5,000 nor more than $50,000 per day per violation and imprisonment for up to 3 years) are more closely comparable to the levels provided by the 1984 amendments to the Resource Conservation and Recovery Act and reflect the commensurately serious nature of the violations to be criminally prosecuted under the Clean Water Act.

This section of the bill also adds enhanced felony penalties for certain life-threatening conduct. This new offense under the Clean Water Act is based upon violation of certain predicates in the act. In the event of such knowing violation, the amendment subjects to greater punishment one who knows that he thereby placed another person in imminent danger of death or serious bodily injury. The criminal penalties that apply upon conviction—up to 15 years imprisonment plus a fine of up to $250,000 for individuals, a fine of up to $1,000,000 for organizations—are equivalent to the RCRA knowing endangerment provision, as recently amended.

The maximum term of imprisonment contained in the provision of the current law penalizing the knowing making of false statements, representations and certification, or tampering with monitoring equipment required under the act, is increased from 6 months—a petty offense—to 2 years—a felony. The provision doubling the maximum punishment with respect to both fine and imprisonment for second and subsequent convictions under the same paragraph of the act is extended to this provision as well as to the knowing endangerment provision.

This provision also extends and consolidates criminal sanctions involving violations of the provisions of section 405 governing disposal of sewage sludge, violations of requirements imposed in State pretreatment programs approved under section 402(b)(8), violations of section 318 permits, and violations of section 404 permits issued by the Secretary of the Army or by a State.

PARTIAL NPDES PROGRAM APPROVAL

This section amends section 402 of the Clean Water Act to permit the Administrator of the Environmental Protection Agency to delegate a portion of the national pollutant discharge elimination system program to a State under conditions.

A State would have two options. Under either option, the Governor must submit a plan to the EPA for approval. Such a plan must either show that the State is prepared to administer program components representing a significant part of the State program, and be prepared to make all reasonable efforts to assume administration of the total program within the ensuing 5 years, or the plan must provide for administration of a permit program for all of one or more discharge categories. Under this second option, the plan must cover all categories of discharges and represent a complete permit program for all categories of discharge under the jurisdiction of the State.

In the event that a State wishes to return NPDES program administration authority to the Federal Government, or in the event the Administrator withdraws approval of a State-operated program, the entire program must be returned to the Federal Government.

States should be tested against their ability to operate an effective permit program and should be encouraged to assume NPDES permitting authority. The bill includes modifications to enhance the opportunities for States to develop NPDES programs and assume this responsibility.

JUDICIAL REVIEW AND AWARD OF FEES

This section revises the provisions of section 509 of the Clean Water Act governing judicial review of certain actions of the Administrator of EPA and provides for the awarding of costs of litigation in actions brought pursuant to section 505 or 509 to prevailing or substantially prevailing parties.

The purpose of the changes in section 509(b)(1) is to clarify the proper venue for court of appeals review of certain actions of the Administrator under the Clean Water Act and to extend the period within which an application for review of such actions must be filed from 90 to 120 days.

Proper venue for judicial review under section 509 of the act shall be in the Circuit Court of Appeals of the United States for the Federal judicial district in which the applicant resides or transacts business which is directly affected by the action in question. The intent is to allow the filing of an application for review in the circuit in which the applicant resides, that is, has his principle place of business, or where he transacts business which is directly affected by the action of which he complains. For example, in a case in which the action complained of is a denial of a permit for a proposed facility, the direct effect of the action would be felt only at the location of the proposed facility, even though indirect effects of the action might be felt at other facilities of the company.

The bill, changes from 90 to 120 days the period within which an application under section 509 of the act for judicial review of an action must be made.

The purpose of this change is to assure that persons who will be significantly affected by an action of the Administrator will have ample opportunity to assess the consequences of such action and if necessary file an application for review prior to the expiration of the time period.

The bill establishes a random selection procedure, to be administered by the administrative office of the U.S. courts, to determine in an orderly fashion the court of appeals in which an agency action is to be reviewed when applications for review have been filed in two or more courts of appeals. Following the selection of a court of appeals, other courts in which applications have been filed are directed to promptly transfer such applications to the court in which the agency record has been filed. Notwithstanding the outcome of the random selection procedure, any court in which an application has been filed would retain the power to transfer the application to any other court of appeals for the convenience of the parties or otherwise in the interest of justice. The court of appeals would also be given the power to award cost of litigation to a prevailing or substantially prevailing party when such an award is appropriate.

The purpose of the random selection procedure is to eliminate the "race to the courthouse" phenomenon and provide for an orderly means of consolidating applications for review of the same agency action. This process is not intended to preclude any court of appeals from exercising its inherent power to transfer an application for review to any other court of appeals for the convenience of the parties or otherwise in the interest of justice.

Section 509(b)(3)(B), as amended, provides new authority for any court of appeals to grant a temporary stay of the effective date of a final agency action pending selection of the court of appeals in which the action will be reviewed. However, it is not the intent that stays should be granted unless the same requirements that ordinarily apply to an application for a stay of an agency action are fully satisfied.

The bill limits the award of costs of litigation in citizen's suits under the act to prevailing or substantially prevailing parties.

The purpose of the new section 509(b)(4) and the amendment to section 505(d) is to clarify the circumstances under which costs of litigation may be awarded. It is not reasonable or appropriate to compel either the Government or a private party to pay the costs of an opposing party to a lawsuit when the opposing party has not prevailed on the issues.

These amendments are not intended to preclude the awarding of costs to a partially prevailing party with respect to the issues on which that party has prevailed, if such an award is deemed appropriate by the court. Nor do they intend to authorize an award of costs to a party who intervenes in a case and, although technically on the prevailing side, fails to make a substantial contribution to the successful outcome of the case.

NONPOINT SOURCE POLLUTION

The bill establishes a new section 319 of the Clean Water Act to require development of implementation program to control nonpoint source pollution.

During the course of the Clean Water Act reauthorization process it became clear to the committee that nonpoint source pollution cannot be ignored any longer. This form of water pollution includes runoff from agricultural areas, mining areas, urban areas, and construction sites. It includes sediments, pesticides, fertilizer, bacteria, toxic heavy metals and other serious pollutants. As point sources gradually are brought under control, nonpoint sources loom as a larger and larger problem. The evidence on nonpoint source pollution cannot be denied. In fact, many of the pollutants that are primarily from nonpoint sources have actually gotten worse in recent years. In the National Fisheries Survey performed by the Environmental Protection Agency and the Fish and Wildlife Service, State fisheries biologists identified nonpoint sources more frequently than point sources as the cause of poor or fair quality fishery waters. Virtually all States report significant water quality problems caused by nonpoint sources. These sources seriously threaten the water quality gains of the last decade, gains made as a result of large public and private investment.

The approach contained in S. 1128 is an important first step. It establishes a program whereby, under Federal oversight, States are to implement nonpoint source management programs that will target critical areas, identify the sources of nonpoint source pollution, identify the best management practices that are available to abate the pollution, and set timetables for program implementation. In identifying these best management practices, the impact of the practice on ground water quality must be taken into account.

The States are accorded considerable flexibility in designing their programs. The States as well as representatives of agriculture interests testified that effective programs would be developed under the more flexible approach in this bill. When designing its program, a State must commit to a timetable of performance, including implementation of best management practices as needed to reduce nonpoint source pollution.

Another important provision of this bill relates to the ability of States to affect the implementation of Federal assistance programs and Federal development projects which otherwise might undercut approved nonpoint source management programs. As part of the State program submission, the State is to indicate the Federal development projects and assistance programs for which it subsequently reviews individual projects and assistance applications to ensure consistency with the nonpoint source management program.

The Federal agencies must accommodate the concerns of the States regarding consistency of the applications or the projects with the nonpoint source management program, according to the requirements and definitions of Executive Order No. 12372 as in effect on September 17, 1983, which was approximately the date the committee acted on the bill. The purpose of this provision is straightforward. It allows the State a significant voice in the operation of Federal programs and projects that could nullify the benefits of the nonpoint source management program. This provision is based directly on Executive Order No. 12372 which establishes mechanisms for Federal/State coordination of Federal activities. It does not invent a new process; it utilizes the one already in existence.

The bill also would authorize $300 million in Federal matching funds over 3 years to support projects to implement State programs. Two-thirds of the funds will be available to the States according to an allotment formula in the bill. The allotment formula is based on population and agricultural lands in production. One-third of the appropriated funds will be held in reserve by the Administrator for distribution to States or combinations of States by application. These funds are to be used to control particularly difficult and serious nonpoint source pollution problems, to support implementation of innovative methods and practices for controlling nonpoint source pollution, for controlling interstate nonpoint source pollution problems, to assess the relationship between nonpoint source pollution and ground water contamination, and to provide financial assistance for implementation by Indian tribes within the reservation of a nonpoint source pollution management program.

Under this bill the appropriated Federal funds may not be used for cost sharing with persons whose activities create sources of nonpoint pollution. States, of course, are free to appropriate State funds for that purpose as they wish but under the bill it would be inappropriate for Federal funds under this program to be paid directly to persons causing the pollution.

The bill also requires a comprehensive report to Congress on the progress of the nonpoint source management programs. This report is very important. Based on annual reports from the State, this report will allow Congress to determine whether the approach established by this bill for dealing with the nonpoint source pollution problem is, in fact, working. It will provide the baseline information that Congress will need to determine whether any of the provisions of this program need to be revisited and perhaps changed at a later date. Although I am confident that both the States and sources of pollution will perform their responsibilities in good faith, this requirement is an exercise in good program management and this report will provide a basis for evaluating the progress of the program.

Finally, this section of the bill directs the Administrator to reserve 1 percent or $100,000—whichever is greater—from the State's construction grants funds to support implementation of programs established under the new section 319.

NATIONAL ESTUARY PROGRAM

The bill adds a new section 320 which authorizes the Administrator to convene management conferences to solve pollution problems in interstate and international estuaries. Under the provisions, EPA would convene a management conference if the Administrator determines that the attainment and maintenance of water quality in an estuary requires the control of interstate or international pollution.

Estuaries are sensitive and diverse ecosystems. Their varied fish and wildlife resources and their proximity to large urban areas provide numerous recreational and economic opportunities for millions of citizens. Over the last decade, environmental and other resource values of many estuaries, including Narragansett Bay, Chesapeake Bay, Puget Sound, Long Island Sound, and Buzzards Bay, have experienced serious water quality degradation.

The management conferences would be convened for up to 5 years and would develop comprehensive conservation and management plans which recommend priority actions for the control of point and nonpoint sources of pollution.

I would like to note, however, that any priority corrective actions or compliance schedules recommended by the conference shall in no manner be less stringent than any requirements of Federal law. Nothing in this seciton shall affect compliance schedules or other requirements established by law or by the Agency for municipal, industrial, or other dischargers.

The Administrator shall approve the plan if it satisfies the purposes of section 320, and the affected Governor or Governors concur. Once a plan is approved, funds authorized to be appropriated under the title II Construction Grants Program, the title VI Water Pollution Control Revolving Loan Program, and the section 319 Nonpoint Source Pollution Program may be used in accordance with the applicable requirements of the act, to assist States in implementing programs. This provision, however, does not in any way preclude the use of funds for any eligible project under title II, title VI, or section 319 of the act.

The provision authorizes $12 million annually for the management conferences. Expenses related to the administration of management conferences are not to exceed 10 percent of the amounts appropriated. Grants are provided on a 75 percent Federal, 25 percent non-Federal basis to States, interstate or regional water pollution control agencies to conduct research, monitoring, modeling, and other technical work necessary to develop conservation and management plans. Those agencies which receive grants are required to report to the Administrator 18 months after receipt of the grant and biennially thereafter.

EPA has established an Office of Marine and Estuarine Protection through which these provisions are to be implemented. The office has initiated studies in Narragansett Bay, Buzzards Bay, Long Island Sound, and Puget Sound as authorized by Congress in the EPA's fiscal year 1985 appropriations bill. The committee expects the office to continue its involvement and support for these estuaries as well as other estuaries as determined by the Administrator.

STORMWATER RUNOFF FROM OIL AND GAS OPERATIONS

This section adds a new subsection (1) to section 402 of the Clean Water Act, specifically exempting certain stormwater runoff discharges from permit requirements and effluent limitations. Only discharges from oil and gas exploration, production, processing, or treatment operations are covered by this provision.

ANTIBACKSLIDING

The bill clarifies the Clean Water Act's prohibition of backsliding on effluent limitations. This prohibition is inherent in the act's policy of requiring reasonable further progress toward the national goal of the elimination of the discharge of pollutants into waters of the United States. The intent of the policy is to preserve pollution control levels achieved by dischargers by prohibiting the adoption of less stringent treatment or control limitations, standards or conditions than those already contained in a permit except in certain narrow circumstances.

The provision makes explicit that a permit limitation based on best professional judgment [BPJ] may not be made less stringent because there has been a subsequently promulgated effluent guideline that would have resulted in less stringent effluent limitations had it been used as a basis for the permit.

These BPJ permits may not be made less stringent solely on the basis of a subsequent guideline. This provision is intended to exclude any consideration of a subsequent guideline as a basis for reducing permit limitations.

Where the permittee can demonstrate that installation and adequate operation of treatment facilities has failed to achieve the permitted effluent limitation, limits in the new permit may reflect the level of control actually achieved, but shall not be less stringent than required by the effluent guidelines in effect at the time of permit issuance or renewal.

The provision also addresses the antibacksliding issue in the context of permits developed on the basis of water quality based effluent limitations. These permits may be renewed, reissued, or modified on the basis of subsequently revised waste load allocation formulas [WLA's] but only if those WLA's are in compliance with a new section 303(d)(5). For the most part, this new section assures that backsliding is prohibited unless it is consistent with the water quality standards adopted by the EPA.

SEWAGE SLUDGE

The bill establishes a timetable for promulgation of management practices and toxic contaminant criteria for sewage sludge use and disposal. It also provides authority to implement and enforce criteria for toxic and other pollutants.

This phased approach reflects the fact that the Agency already has sufficient information to establish criteria for some contaminants and some sludge uses, while information may be lacking for other contaminants or uses. The amendment requires the Agency to proceed with regulation where it has the basis to do so. A longer timeframe is provided for pollutants for which needed information presently is not now available.

When a public treatment works is issued a discharge permit, it shall include the management practices and criteria issued by EPA. The permit shall also include requirements for the use and disposal of sludge in accordance with the Resource Conservation and Recovery Act, the Safe Drinking Water Act, the Marine Protection, Research and Sanctuaries Act or the Clean Air Act, or under applicable State permit programs.

INTERSTATE DISPUTE RESOLUTION

The bill requires the Administrator to decide through the permit issuance process between States as to whether a discharge for which one State proposes to issue a permit will violate water quality requirements or adversely affect public health in another State.

A new section 511(e) is added with the intention to cover sources not covered by permits. In instances where water quality is being adversely affected by pollutants from another State, the affected State or municipality may petition the Administrator who shall determine, after a hearing, if the pollution is violating a water quality requirement or adversely affecting the public health of such State. If the Administrator so determines, he must issue an order restraining the discharge or provide appropriate relief, taking into account the goals of the act and other equitable considerations.

The new authority in 511(e) shall only apply where cases cannot be resolved under the procedures established under section 402 or under agreements adopted under the authority of the Colorado Salinity Control Act and not impair rights to quantities of water. Additionally, the provision would not apply to water pollution caused by emissions from sources regulated under the Clean Air Act.

PRESERVATION OF OTHER RIGHTS

This section preserves State common law, permitting a person in a downstream State who is injured or aggrieved by pollution from an upstream State to seek relief in the courts of the injured party's State or in the courts of the neighboring State through State common or statutory law.

The provision does not apply to any dispute involving interstate water pollution which is pending upon enactment (or has been finally adjudicated) and on which the Supreme Court has rendered a decision.

LIMITATION ON DISCHARGE OF RAW SEWAGE BY NEW YORK CITY

This places a cap on the amount of discharge of raw sewage by the city of New York. The cap would apply to the North River treatment plant and the Red Hook treatment plant if the facilities have not achieved their required treatment levels by established deadlines. EPA Administrator may grant limited waivers from the cap in the event of significant interruption in the operation of the wastewater treatment plants, or due to random or seasonal flow variations. Deadlines may be extended for limited reasons such as act of war or unanticipated natural disaster.

CHESAPEAKE BAY PROGRAM

An EPA Office of Chesapeake Bay programs is established in the bill; $10 million is authorized annually through fiscal year 1988 in grants to States in the Chesapeake Bay drainage basin to implement interstate management plan on a 55 to 45 percent Federal-State basis. The bill authorizes $3 million annually through fiscal year 1988 for continued Chesapeake Bay research.

GREAT LAKES

The bill establishes a Great Lakes National Program Office within the EPA. Although an office has already been established administratively, this provision more clearly defines its duties, enhances its accountability to Congress, and authorizes funding.

The program office has three basic duties: developing and implementing plans to carry out U.S. responsibilities under the Great Lakes Water Quality Agreement of 1978, establishing a water quality surveillance network, and serving as the liaison to the Canadian members of the International Joint Commission and the Canadian counterpart to the EPA. In addition, the office is required to develop programs for control of nutrients, including phosphate, and toxic chemicals.

A total of $10 million per year is authorized for fiscal years 1986 through 1990 for the Great Lakes National Program Office to carry out its duties under the section.

CLEAN LAKES

The bill amends section 314 of the act to provide for effective reporting of lake quality by State agencies on a regular basis. Reports are to identify lakes in each State, identify lakes with impaired uses, and include a description of the State program for lake protection.

To avoid unnecessary reporting burden, the lake quality reports will be included in the State water quality report prepared every 2 years under section 305(b) of the act. Also, a State must prepare and submit a lake quality report to EPA in order to receive a grant under section 314 of the act.

Finally, section 314 is amended to include saline lakes under the Clean Lakes Program.

TITLE II

Title II of the bill addresses the construction grants program; $2.4 billion is authorized annually for the construction grants program for fiscal years 1986 through 1988 and $1.2 billion annually for fiscal years 1989 and 1990. Although funding for the title II construction grants program is concluded as of 1990, other sections of the bill authorize Federal funds for capitalizing State revolving funds through 1994.

This legislation provides States and municipalities with the clear intent that the transition to State-local funding initiated in the 1981 amendments will be completed during the period of this authorization. By establishing certainty in this timeframe, States and municipalities will be able to plan effectively for assumption of increased funding responsibilities.

ALLOTMENT FORMULA

The bill establishes a new allotment formula for distributing construction grant funds and State revolving fund capitalization grants among States for the fiscal years 1986 through 1990. The formula in existing law expires with the fiscal year 1985 authorization.

The allotment formula in the bill is based on each State's needs for sewage treatment facilities, as expressed in the 1984 needs survey. This survey, conducted by the Environmental Protection Agency with the cooperation of the States, is the most current, complete, and accurate determination available of the needs for publicly owned treatment works which can be assisted under titles II and VI of the act.

The formula is based on each State's aggregate needs for facilities providing secondary treatment (category I of the needs survey), advanced waste treatment required by water quality standards (category II), and correction of infiltration or inflow problems (category IIIA), and for interceptor sewers (category IVB). These are the only categories of treatment works fully eligible for funding under the law. In restricting eligibility to these categories of facilities in the 1981 amendments to the Clean Water Act, the Congress determined that on a national basis these are the facilities most related to attainment of the water quality goals of the construction grant program. Also, these are the core treatment facilities that have been completed to meet the 1988 secondary treatment deadline for municipalities.

To reach the allotment formula contained in the reported bill several steps were performed. First, those States with very small remaining needs were identified. These States need more than an allotment strictly on their share of needs. This is so they are able to have a manageable program of sufficient size to make meaningful investments in sewage treatment facilities as well as meet the 1988 secondary treatment deadlines.

In allotment formulas adopted by the Congress in the past, these purposes have been served by a flat minimum allotment per State of one-half of 1 percent. Although this is somewhat arbitrary, it assures program momentum and avoids disruption. Because the number of these smaller States is growing, as the construction grant program nears its objectives, the formula establishes a mechanism to assure adequate program size for smaller States. Thus, the approach is more reflective of needs and less arbitrary than the minimum allocation approach.

The allotment formula establishes two groups of States with small shares of eligible needs. The first group of 13 smaller States whose individual needs are less then one-half of 1 percent of the total receive an aggregate allotment of 8.5 percent which is only 2 percent more than what these States would receive in the aggregate under the existing policy. The other groups of 8 States whose individuals needs are less than 1 percent of the total but greater than one-half of 1 percent, receive an aggregate allotment of 9 percent. The actual needs of these States constitute 6 percent of the total.

Because the actual needs of the States in the two groups vary greatly a method was sought to reduce the variation. A standard statistical approach utilizing logarithms was used to reduce the variations.

Because the States in the second groups had less variation than those in the first, a method was employed to reduce that variation, but to a lesser degree than the use of logarithms. The allotment among States in this second group is based on the cube of the logarithm of the actual needs of a State as a fraction of the sum of the cubes of the logarithms of actual needs for all the States in that group. This method was selected because it reduced the variation from that among actual needs, but not as much as the logarithms would have produced.

The remaining States, with individual actual needs in excess of 1 percent of total eligible needs, are allotted 82.5 percent of appropriated funds. So that no State in this group would receive an allotment less than that of a State with smaller actual needs, the bill provides a minimum 1.25 percent.

Because eligibilities of needs have changed greatly from the 1980 and 1976 needs surveys on which the previous allotment formula was based, a number of States would suffer dramatic losses. To minimize the program disruption which would result from such reductions, the bill contains a hold harmless provision, guaranteeing each State 80 percent of the allotment it had under the previous allotment formula. Eleven States benefit from this 80 percent hold harmless provision: California, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, Ohio, Pennsylvania, Virginia, and West Virginia.

ELIGIBILITIES AFTER 1990

The "grandfathering" provisions in the 1981 amendments for phased-segmented projects and projects built to accommodate future population are terminated after fiscal year 1990.

DESIGN-BUILD PROJECT

States wishing to build treatment works which are under $8 million and are determined to be simple treatment systems—for example, aerated lagoons—may enter into an agreement with the Administrator to erect treatment works under alternative design-build grant procedures. Under this provision, smaller projects can avoid costly review and bidding requirements and can contract for both the design and construction of a treatment works. Under the agreement with the Administrator construction deadlines and management procedures are established and a bond form the contractor is required to protect the Federal interest in the project. Not more than 25 percent of a State's allocation can be used under this alternative.

INNOVATIVE AND ALTERNATIVE PROJECTS

This provision reauthorizes the innovative and alternative set-aside program at its current levels.

MARINE CSOS AND ESTUARIES

Similar to the funding concept used in the nonpoint section of the bill, the Administrator shall reserve 1½ percent of the sum appropriated of which two-thirds would be used to address water quality problems of marine bays and estuaries which are impacted by discharges from combined storm water discharges and one-third to implement the newly established national estuary program.

STATE WATER POLLUTION CONTROL REVOLVING FUNDS

The bill creates a new title VI of the act by creating State water pollution control revolving funds [SRF's].

To carry out the SRF program, $1.2 billion is authorized for fiscal year 1989 and 1990, $2.4 billion for fiscal year 1991, $1.8 billion in fiscal year 1992, $1.2 billion in fiscal year 1993 and $600 million in 1994. Sums are allotted pursuant to the allotment formula in the bill. Funds must be obligated within one year and are subject to reallotment among the States.

To receive a grant, States must enter into an agreement with the Administrator. If a State has not complied with the agreement the Administrator shall withhold the capitalization grants. These sums may be subject to reallotment if the Administrator is not satisfied that the State has taken necessary corrective actions.

To receive a capitalization grant a State must agree to establish a water pollution control fund to receive all grants. The State must provide a 15 percent match to the Federal grant from State monies and make binding loan commitments in an amount equal to 100 percent of the grant payments within 1 year of receipt of the payments.

The State must also make adequate assurances that funds will be committed in an expeditious and timely matter; that treatment works constructed with funds made directly available from grants will meet the applicable Federal requirements for grant projects; and that funds will first be used to assure maintenance of progress in the completion of plants needed to meet the 1988 compliance deadline, or other enforceable deadlines, goals and requirements of the act.

In carrying out the SRF program States are required to use acceptable procedures and maintain project accounts in accordance with accepted government accounting standards.

The SRF administered by the State shall be dedicated solely to providing financial assistance to municipalities for construction of publicly owned treatment works and for implementation of management programs established under section 319 and 320 of the bill.

The SRF is authorized to make loans at or below market rates, including interest free loans, at terms not to exceed 20 years. Principal payments shall commence within 1 year of project completion and be fully amortized not later than 20 years after project completion. Loan recipients shall establish a dedicated source of revenue for repayment and all repayments shall be credited to the fund.

The SRF may be used to buy or refinance debt obligation of municipalities, to guarantee or purchase insurance for local obligations to improve credit access or reduce interest rates, as a source of revenue for SRF bonds issued by the State, loan guarantees for similar local SRF's, and for the reasonable cost of administering the program.

The bill requires States to carry out independent audits of SRF's and to prepare plans describing the short- and long-term goals and objectives of the SRF. States are required to submit an annual report to the Administrator who shall conduct a review of the plans and reports.

States wishing to utilize title II construction grants funds for SRF's established in title VI may do so provided the loan fund is established in compliance with title VI requirements.

In 1990 the Administrator shall submit to Congress a report on the financial status and operation of SRF's. The report shall include an inventory of facilities in noncompliance, sources of available funds to meet construction needs; an assessment of loan portfolios and user charges and operation and maintenance of treatment works.

Mr. President, we have worked for a long time on this bill, and I certainly wish to extend again my thanks to the ranking minority member of the full committee, Senator BENTSEN; of course, to our full committee chairman, Senator STAFFORD; and to the minority floor manager of the bill, my good friend, Senator MITCHELL, for their long, hard work and efforts in developing this legislation, and I do urge my colleagues to support it.

The **PRESIDING OFFICER**. The Chair in his capacity as a Senator from Arizona suggests the absence of a quorum.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. **STEVENS**. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The **PRESIDING OFFICER**. Without objection, it is so ordered.

Mr. **STEVENS**. Mr. President, I extend my gratitude to the current occupant of the chair for his courtesy, and I thank him very much.

I have no statement to make now. I understand there are Senators who do wish to make opening statements.

Mr. **MITCHELL**. Mr. President, I join Senators STAFFORD, BENTSEN, CHAFEE, and others in supporting the reauthorization of the Clean Water Act.

The 1972 Clean Water Act set ambitious goals for the country: "to restore the chemical, physical, and biological integrity of the Nation's waters." We have made substantial progress toward achieving these goals. The bill we are considering today will reaffirm our commitment to the clean water goals established over a decade ago.

Over the past decade, we have improved our understanding of environmental issues and expanded our commitment to environmental programs. While there have been dramatic and necessary changes in the concept of environmental protection, it is important to recognize that the basic design of the Clean Water Act is still sound and the public commitment to clean water remains strong.

In the State of Maine, there is clear evidence of the effectiveness of the pollution control programs established in the Clean Water Act:

Atlantic salmon have returned to the Penobscot River after a 30-year absence; the Maine commercial shell fishing industry declined for many years due to the discharge of untreated sewage. But as of 1982, over 4,000 acres of soft shell clam flats had been reclaimed with an estimated value of $6.5 million a year.

I cite these examples as the success story of just one State. Virtually every State in this country has similar examples.

There are a number of amendments before us today which would significantly expand or revise the act to address emerging pollution problems or changing conditions. I would like to speak briefly to three of these issues: the control of toxic pollutants; management of nonpoint sources of pollution; and financing of waste water treatment plant construction.

TOXIC POLLUTANTS

Proposed amendments to the Clean Water Act would result in a second-generation program to achieve greater control of toxic water pollutants, where necessary.

Under the current law EPA is required to establish uniform best available technology limits for the control of toxic pollutants. There is no assurance, however, that compliance with a technology-based limitation represents a safe level for a particular toxic pollutant. Although the current law provides general authority for further control, these amendments initiate a specific process leading to the control of these toxic substances to protect public health and water quality by a date certain.

Specifically, the amendments require States to:

Identify within 2 years waters that do not meet their water quality standards due to the discharge of toxic pollutants; adopt numerical criteria for the "problem" pollutants in such waters; and establish effluent limitations for individual discharges to such water bodies within 2 years and assure compliance with limits within 3 years.

This provision is an important addition to our ability to protect the public health of the American people from increasing amounts of toxic chemicals.

NONPOINT POLLUTION

EPA recently estimated that as much as half the remaining water pollution problems result from nonpoint sources. Controlling nonpoint pollution, however, has proven to be an extremely difficult problem.

The bill before us includes a major amendment providing for State programs to identify and control nonpoint source pollution. States will identify waters affected by nonpoint sources of pollution and develop programs to implement best management practices for controlling this pollution. State programs will include a schedule for implementation and will be coordinated with related Federal projects.

A total of $300 million dollars is authorized over 3 years to support this important program. The majority of this funding would be allotted among the States. The EPA Administrator would also have discretion to fund special projects.

WASTEWATER TREATMENT PLANT FINANCING

The most significant issue addressed in this reauthorization of the Clean Water Act is the financing of wastewater treatment plant construction. This aspect of the reauthorization bill is important because it provides State and local governments with a clear statement of future Federal involvement in treatment plant financing and allows them to finalize plans to meet the compliance deadlines established in the law.

Amendments to the act would phase out the existing grant program and replace it with Federal support for State revolving loan funds. The bill provides for allocations of a total of $18 billion dollars over the next 9 years to assist municipalities with these construction projects. The direct grant assistance program will continue for the next 5 years. Starting in 1989, States will receive a total of $8.4 billion over the following 6 years to capitalize State revolving loan funds to assist municipalities in financing of wastewater treatment projects.

So there will be an overlap in the middle 2 years with respect to the current grant program and the newly established State revolving loan fund.

Establishment of the State loan funds will complete the process of transfer to State control of the municipal treatment construction program.

CONCLUSION

In conclusion, I am confident that the basic design of the Clean Water Act is sound. We have before us amendments for fine tuning existing provisions of the act and addition of programs to address emerging problems. These proposals are consistent with the national consensus for clean water. The great majority of persons responding to a recent survey either supported the Clean Water Act or wanted it strengthened, even considering the costs of pollution controls. These amendments are an important step toward carrying out this mandate.

I join the chairman of the committee, Senator Chafee, the ranking member of the committee, Senator Bentsen, and the chairman of the full committee, Senator Stafford, in urging their adoption.

Mr. BENTSEN. Mr. President, first let me state how much I appreciate the incredible amount of work, the time, and the effort that Senator Chafee, chairman of the Subcommittee on Environmental Pollution, and Senator George Mitchell have done on this piece of legislation. It is an excellent job. It is a bipartisan job. It is a lot of hard work and it continues the effort toward a most important national goal. I am pleased to recommend this legislation to my colleagues in the Senate.

The effort to clean up our Nation's waters is maintained by the overwhelming support of the American public. From the Rivers and Harbors Act of 1899 to the legislation before us today, Americans have recognized the responsibility to our neighbors, our children, and ourselves to correct dangerous abuses to this critical aspect of the environment.

Our hearings proved that the Clean Water Act is paying off with substantial reductions in pollutants. Treatment plants are removing 65 percent more of the two conventional pollutants—suspended solids and biochemical oxygen demand—than in 1973. Our rivers are cleaner and our water quality has improved through measures including controls implemented by industry.

Take the Houston Ship Channel. That Houston Ship Channel had one of the highest octane ratings probably in the United States. We were always worried that the thing was going to catch fire on us. But now you have fish swimming in it and you have an incredible cleanup job that has been done in that regard.

This legislation, though, reflects that there is a lot of work yet to be done. And it provides some strong standards to deal with the problems of toxic substances, and it develops a new program to deal with pollution from nonpoint sources such as runoff from agricultural and mining areas, and construction sites.

Because of a growing national concern over nonpoint pollution, we included provisions to fund States in efforts to target and implement correctional programs.

The problem all along has been sporadic funding of these State management programs. If they can get the funds, States are willing and able to develop programs based on their assessments of what is achievable.

This approach allows States to build on the solid, voluntary conservation district structure, rather than imposing unnecessary Government regulation. Our farmers and ranchers have a great stake in these efforts, and they have demonstrated their willingness to cooperate in efforts to improve their stewardship of our land and water resources.

Given their track record, we will all benefit by asking their advice on runoff water pollution, not requiring that they do it strictly by a book written in Washington. This legislation recognizes the value of working with our States and our agricultural community, and it maintains a proper Federal role of assistance, not threats.

Much of the focus of our committee discussions was directed at the future of the construction grant program, and I commend members of the committee for their efforts in arriving at the solutions included in this bill.

I have heard quite a bit of controversy already about the allotment formula. I understand that. It is a tough one to arrive at, to develop equity in that kind of a situation. I have looked at what has happened in the past. We have had a massive migration of people to the Southwest and to the South. The committee formula tries to take recognition of that. It uses the latest census data in trying to establish those needs. I well understand that in some other areas and in the Northeast, many of the needs have been satisified. Others remain yet to be done.

I look at situations like the example that we had of the State of Michigan. It had a per capita expenditure of $232, from 1972 through 1984. My friend, the distinguished Senator from Michigan, is rightly concerned about the fact that the per capita expenditure now would be about $69 under this particular piece of legislation, but the total for the life of the program will be $302. I look at the same thing for my friend in New York—$247 up to now and $91 in this bill for a total of $338. But then I look at my own State of Texas. I look at the fact that up to now it has been $88. Another per capita expenditure of $60.66 and we finally get up to $149.

We have gone a long way to try to correct what has happened in the past and to anticipate the needs up to the year 2000. We have not completely achieved it in the committee allotment formula but, as I understand the political realities of the Senate, and as I understand them in the House, I think it is a reasonable compromise. I am prepared to support it. I look at this situation. If we go to conference with the House and they determine they are going to take the old allocation based on the past and not recognizing the needs of the future, the damage will be even more to those of us in the growing States. I understand the problems of the smaller States. But I also understand that in this body the smaller States on a per capita basis have a tendency to do a little better than the rest of us. Again, those are the realities. I walk into my office and I see how many people I have, and how much square footage they have per employee. Then I walk into the office of some of my friends from some of the very smallest of States. I do not find myself bumping into any furniture. And I see a great deal more space per employee. Again, those are the realities. That is the way the system works. But I think that what we have done is kept them with sufficient funds where they can complete a project, where they will not have it partially done, and in turn we have said to some of those States that have actually lost population, that have had substantial expenditures in the past, and have completed many of their needs already, you are not going to get a violent change. We are going to put a safe harbor there. We are going to put a hold harmless. We are going to put a floor. We have moderated this kind of shift. I think it is a realistic compromise. I support that.

I would point out that the construction grant program was substantially reformed and in some ways reduced in 1981. A central element of the agreement that led to these reforms was the commitment of the administration to fund the program for 10 years at $2.4 billion per year. This would constitute the time and funding needed to do the job based on needs survey data available at that time.

But when we started to work early this year, we were looking at a proposal from the Office of Management and Budget to phase out the program before 1990, and to fund no new starts. That proposal broke faith with the Congress and the American people, departing from the 1981 commitment.

Mr. President, the legislation before us recognizes that the time is indeed coming when many of our States will have met their basic treatment needs. It recognizes that the 1988 deadline for municipal compliance is partially accountable. Under the 1981 amendment, the effective Federal share of total project costs is only 30 to 40 percent. The Federal Government has contributed more than $40 billion as its part in constructing publicly owned treatment works, and the results have been remarkable.

This legislation continues to shift the program to State and local governments, as intended in the 1977 and 1981 amendments, but it also recognizes that the OMB proposal to pull the rug out from under a national goal at a critical point of progress was too abrupt and poorly planned.

Under this legislation, States at their own discretion will be able to start planning for the future by using their allotments to start their own revolving funds to carry on the program. The current $2.4 billion annual authorization for construction grants would be extended for 3 years. In fiscal years 1989 and 1990, a full one-half of the annual total authorization of $2.4 billion would go to capitalization of State water pollution revolving loan funds under a new title VI.

In fiscal year 1991, no further authorizations would be made for title II construction grants, and the title VI revolving fund would be authorized $2.5 billion.

After that point, revolving fund authorization would be reduced to $1.8 billion in fiscal year 1992, $1.2 billion in fiscal year 1993, and $600 million in fiscal year 1994. After that, authorizations for direct Federal contributions would be ended.

This orderly progression is a reflection of close cooperation with the States—both to assure that the revolving fund mechanism is workable and to provide a period of transition to allow States with lengthy legislative cycles or difficult remaining needs to work out their problems.

Since the formula for allotting contruction grant funds among the States expires with the 1985 authorization, the bill establishes a new allotment formula for the years 1986 through 1990. This allotment formula is based on the 1984 needs survey, the most up-to-date and accurate compilation available. It reflects a shifting population and progress in meeting needs, but it also includes a strong effort to minimize disruption in States where programs are closer to completion or whose needs do not match up to eligibilities.

The legislation provides a "hold harmless" provision, guaranteeing each State 80 percent of the allotment it had under the previous allotment formula, regardless of actual needs under the survey.

The result is a formula that provides equity for all States, one that makes real progress toward water quality goals.

I would point out that New York continues to receive the greatest share of funds under the formula—a full $76 million more than the next highest State, California. Texas would receive the third largest allotment, $127.3 million, which is a sizable increase over previous allotments and reflects, as in other areas, a high rate of growth. However, Texas will receive $24 million less than it would under an allocation based strictly on eligible needs, in part because Texas is helping to fund shares of smaller States and hold harmless shares for New York and other States with declining relative needs.

There are several other features of the bill I will discuss briefly. One of special interest to Texas is the provision for partial delegation of the permit program. We have been unable to obtain approval for the Texas permit program to operate in place of the Federal program because permitting responsibilities are divided in Texas between the department of water resources and the Texas Railroad Commission. The railroad commission, which regulates oil and gas operations, has not been interested until recently in seeking delegation. This amendment will allow the Texas Department of Water Resources, which has a fine permit program, to gain Federal approval for permitting all the categories of sources under its jurisdiction.

Two other provisions of the bill deal with case-by-case modifications to the best available technology requirements of the act. Section 301(g) of the act has allowed modifications of these requirements for so-called nonconventional pollutants, if a rigorous demonstration of no effect on public health or water quality could be made. However, the Agency brought to our attention the enormous difficulty of obtaining adequate information to make or review such demonstrations for most nonconventional pollutants. Therefore, the committee accepted EPA's proposal to limit section 301(g) to several specific substances for which adequate information was judged to be available. This will allow modifications to be granted, if appropriate, for the categories of sources which have requested them prior to this amendment, including steam electric generating plants and the iron and steel industry. It will also allow categories of sources with effluent guidelines yet to be published to use section 301(g), for discharges of these listed substances. Otherwise, section 301(g) will not generally be available after enactment of this bill.

The committee also included a provision authorizing, but limiting, modifications of best available technology requirements on the basis of "fundamentally different factors." The Agency had adopted administratively a procedure for granting waivers from uniform effluent guidelines based on individual characteristics of sources which were fundamentally different from the factors considered by the Agency in setting the effluent guidelines.

This procedure was upheld for indirect dischargers by the Supreme Court. The amendment to the Clean Water Act in the reported bill recognizes a "fundamentally different factors" modification, as the only waiver or modification available for toxic pollutants, and provides specific limitations on the time for considering applications as well as what applications are acceptable. This authority should allow the occasional source which really does not fit the categorical regulation to receive appropriate treatment, while providing for most cases to be considered for the creation of effluent guideline subcategories.

The potential for effluent guideline subcategories has always been available and has been used in many cases. Companies who have relied on the concept of "fundamentally different factors" should be prepared to fully participate in the guideline development process to assure that adequate information is available to EPA to develop appropriate subcategories. Similarly, EPA should recognize that the limits this bill places on the use of "fundamentally different factors" may create a need to reopen some guidelines in order to properly include information for the purpose of defining justifiable new subcategories.

This is a sound bill. Each provision, every requirement the new enforcement standards, are all aimed directly at the goal of cleaning up our Nation's waters.

I urge my colleagues to consider that goal, and to support this important legislation.

Mr. METZENBAUM. Mr. President, I rise to object strongly to the new sewer construction grants formula contained in the Clean Water Act amendments.

Once again, the Senate is being asked to shift desperately needed Federal funds away from the older, populous States in the East and Midwest to benefit growth States in the South and West.

Under this formula change, every State bordering on the Great Lakes would lose at least 19 percent of the funds they currently receive to help pay for waste water treatment facilities. In my State of Ohio, the reduction would actually be a 21 percent cut from current funding levels. Instead of receiving $136 million in construction grants money each year as Ohio does now, the State would get only $109 million per year. This means that over the next 5 years, Ohio would lose more than $203 million.

In one fell swoop, the Senate Environment Committee has tagged a total of 18 States as "losers" in the allocation of Federal money used to control water pollution. The Environment Committee's arbitrary behavior means that these losers will have to go without $262 million in EPA construction grants money every year.

Make no mistake, Mr. President, this annual cut of $262 million will not help reduce the Federal deficit. No, indeed. This $262 million will simply be shifted to those States which the Environment Committee has selected as the "winners."

Because of the Senate Environment Committee's generosity, States like Texas, Utah, Arizona, and Mississippi will gain anywhere from 29 to 129 percent in new construction grants money for waste water treatment facilities.

Mr. President, the older, populous States in the East and Midwest need every penny of their fair share of limited Federal resources. It's dead wrong to encourage the shift of Federal tax dollars away from these States to high growth areas of the country.

Why should Ohioans only get back 87 cents' worth of Federal funds for every tax dollar they send to Washington when citizens in other States get back a far greater return on their Federal tax dollars? Why should a heavily populated State like Ohio rank 39th in terms of Federal money spent there? Why should a State like Ohio—a State with more than its fair share of water pollution problems—be asked to give up millions of dollars specifically designed to help curb these problems?

Something is very, very wrong with the manner in which Federal tax dollars are being allocated among the States. Let's not make the situation worse by changing the construction grants formula under the Clean Water Act.

Water quality in the Great Lakes has improved over the years. This is due in no small part to the waste water treatment facilities located in the neighboring States.

We must not jeopardize the strides we have made in cleaning up the pollution in the lakes. Over 26 million Americans depend upon the Great Lakes for their drinking supplies and millions more depend on the lakes for recreational pursuits.

The Great Lakes States deserve their fair share of Federal funding to construct and upgrade municipal sewage facilities to treat waste water discharges to the lakes.

I urge my colleagues to reject the new construction grants formula contained in this bill.

SEWER GRANTS FORMULA UNACCEPTABLE

Mr. KASTEN. Mr. President, I rise to express my strongest possible opposition to the sewer grants allotment formula that the Committee on Environment and Public Works has adopted.

The committee-passed formula makes a mockery of our efforts to provide Federal assistance to the construction of municipal sewage facilities on a national basis. Instead, the new formula is a massive redistribution of Federal funds away from highly populated established cities and to subsidize the growth of new cities.

When the Congress first established the Clean Water Act and the Municipal Sewer Grants Program, it established the objective of providing sewage treatment facilities for all of our Nation's towns and cities. When this program was established, it was agreed that municipalities would be a partner in the efforts to build these facilities.

To achieve that objective, Congress developed a very complex formula on how those funds would be distributed. Most probably agree that that formula should be updated periodically. All agree that that formula should reflect the water quality needs of the Nation.

Unforunately, the formula that is before the Senate today does not reflect the water quality needs of the Nation. Some have suggested that it more accurately reflects the distribution of political power around the Nation, but clearly it does not provide the mechanism for meeting our water quality goals.

If the committee intends to use the EPA needs survey to be the basis of the allocation of sewer grant funds, it should use that formula directly. Instead, the Senate today is considering an artificial manipulation of that formula.

That formula cannot be justified on merit. It can only be explained by looking at provincial needs.

Obviously, the Senate has broken into two sides on this issue. Those two sides are those who benefit from the committee-passed formula, and those whose States are losers. But that is not the whole issue. We should also look at the national interest, of how to achieve our water quality goals.

This formula does not achieve those goals. It does not help the Nation live up to its obligations specified in the Clean Water Act and other documents.

As a spokesman not only for the specific interest of Wisconsin, I would like to call my colleagues' attention to the impact of the committee formula on the Nation's most important water resource—the Great Lakes.

The impact of this amendment on the Great Lakes is devastating. There is a net reduction of approximately 18 percent in funding for sewer programs in the Great Lakes.

How can this be? Have the needs of the Great Lakes region declined by 18 percent? Not at all! In fact, we are way behind not only in our domestic commitment to water quality, but also in the commitment that we made to another nation.

In 1978 the United States signed an updated version of the Water Quality Agreement with Canada. As part of that effort, we made a commitment to provide adequate sewage treatment for our municipalities.

Today, only about two-thirds of the municipalities that discharge into the Great Lakes basin are adequately sewered. The Canadians have on the other hand completed 99 percent of their municipal sewage treatment construction program.

Clearly the obligations we made will not be served by the formula contained in the committee version of the Clean Water Act. Clearly, if we are to use a national needs survey, we should not provide for this excessive artificial manipulation of the formula.

We should put our financial resources where they will do the most good to protect our Nation's water.

For this reason, I will support Senator DURENBERGER in his effort to provide a formula that actually protects the Nation's water quality.

Any other objective is not acceptable and should be resoundingly defeated in the Senate.

Mr. ABDNOR. Mr. President, I rise in support of the EPA wastewater treatment construction grant allotment formula contained in the committee-approved bill, S. 1128.

Mr. President, the funding formula developed by the committee is based upon EPA's 1984 needs survey. Further, the committee bill includes an 80-percent holds-harmless provision. The committee intends that the distribution of funds reflect our most recent estimate of eligible needs, while preventing the disruption of ongoing program efforts in any of the States or territories.

Throughout the history of this program, EPA has directed the States to prioritize the wastewater treatment needs of their larger municipalities. My State of South Dakota has complied with the Agency's policy in this regard. Now, with the larger projects underway, the smaller communities are looking forward to seeing their water quality needs addressed. Under the committee bill, South Dakota's rural communities will have the opportunity to achieve their water quality goals.

Mr. President, the alternative construction grant allotment formula proposed by my friend and committee colleague from Minnesota, Senator DURENBERGER, reduces from $11,737,260—the amount provided under existing law—to $6,544,000 South Dakota's construction grant allotment. An additional 12 States would be similarly affected—losing 40 percent or more of their construction grant funds. Under the committee bill, no State would lose as large a percentage of its funds.

While I recognize that no formula will ever satisfy all 100 Members of this body, I believe the committee has attempted to respond to our Nation's water quality needs without creating havoc in any of the States. Mr. President, I strongly urge my colleagues to support the allotment formula developed by the committee.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STAFFORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ABDNOR). Without objection, it is so ordered.

Mr. STAFFORD. Mr. President, I support S. 1128, the bill to reauthorize and amend the Clean Water Act. Senator CHAFEE has done an excellent job of describing its provisions. I agree with this explanation of the intent behind this bill. I congratulate him and Senator MITCHELL for their hard work in developing this bill, and I want to commend my other colleagues on the committee from both sides of the aisle for their efforts as well. I especially want to commend my good friend and colleague, Senator BENTSEN, for his contributions to this bill. As ranking minority member of the committee, he has worked tirelessly to help bring this bill forward.

The committee determined that the Clean Water Act is fundamentally sound. It is working, and water quality has improved in many areas as a result of Clean Water Act requirements. According to an extensive study by State water pollution control administrators, 47,000 miles of streams and rivers have improved in the past decade, as have 390,000 acres of lakes and 3,800 square miles of estuaries. In the face of substantial growth and development, we have managed to hold our own in an additional 296,000 stream miles and in most of our lakes and estuaries.

That is the good news. The bad news is that 11,000 miles of stream have been degraded. And water quality has gotten worse in over 1.6 million acres of lakes and 560 square miles of estuaries.

It is clear that although we can claim substantial water quality gains, we as a nation still have a way to go before the job is done. We are not yet able to relax. Instead, we need to improve the Clean Water Act's ability to address these persistent water quality problems. S. 1128 would do that.

The committee learned that the major remaining water quality problems are caused by toxic pollutants and nonpoint source pollution. The bill before us strengthens the Clean Water Act in both these areas.

Let me first mention the so-called toxic hot spots problem. The States report that 14,000 stream miles, 638,000 acres of lakes and 920 square miles of estuaries have acute toxic problems. S. 1128 establishes a schedule for States to identify these areas that will remain a problem after all technology-based requirements have taken effect and to modify discharge permits accordingly. Permittees then would be required to meet the toxics restrictions within 3 years.

The bill also gives long overdue attention to nonpoint source pollution. Polluted runoff from farmland, city streets, and construction areas now accounts for about half of the water pollution in this country. In some basins, it is the major pollution source. This bill calls for the implementation of nonpoint source management programs by State and local governments. As my colleagues all know, this is always a difficult issue. But I am pleased to say that the nonpoint provisions in this bill have the unanimous support of all members of the committee.

The bill also shores up some weaknesses in the Clean Water Program. One of the most important involves the so-called fundamentally different factors variance. The committee bill, consistent with a recent Supreme Court ruling, allows industries to apply for modifications of applicable effluent standards under certain circumstances. However, it is designed to prevent abuse of this privilege. For example, it removes incentives to withhold information that EPA needs to set valid effluent standards. It also sets a timeframe for decision on applications in order to assure that the application for modification is not used as a device to delay other permit requirements.

I would mention in passing provisions to limit backsliding in discharge permits, to establish criteria and permit requirements for toxic contamination of sewage sludge, and to restrict waivers for ocean discharges.

We also have elected to continue the Construction Grants Program at its current level of $2.4 billion, while gradually phasing in a system of State Revolving Loan Funds that will replace the present Federal Grants Program.

In presenting this bill, the committee reaffirms its commitment to the goals of the Clean Water Act. These are the goals of the American public. Poll after poll has demonstrated the continuing public commitment to clean water. By an overwhelming majority, the people oppose any weakening of the Nation's clean water law.

S. 1128 is a good bill, and I recommend its passage.

Mr. President, I ask unanimous consent that the remainder of my remarks be entered as if read.

There being no objection, the remarks were ordered to be printed in the RECORD as follows:

ADDITIONAL REMARKS OF SENATOR STAFFORD

I want to discuss in more detail some of the more important provisions of this bill.

First, I want to mention the importance of the provisions of S. 1128 related to "toxic hot spots." These provisions are designed to focus in on water bodies that are especially hard hit by toxic pollutants, and then to establish special limits on toxic discharges that are causing the problem.

These "hot spots" exist because technology-based standards for toxic pollutants, by their very nature, do not take into account conditions in the receiving water. The cumulative discharge from several toxic polluters can result in unacceptable concentrations of toxic pollutants even after implementation of technology-based controls. S. 1128 improves the Clean Water Act by establishing a timetable for identifying hot spots and bringing the polluters into compliance with water quality standards.

An important problem in this regard is that few States have numerical ambient criteria for toxic pollutants. The lack of ambient criteria make it impossible to calculate additional discharge limitations for toxics. EPA and some States are experimenting with a bioassay approach to setting effluent limits, but so far it has important shortcomings. The major one is that it does not consider human health effects or important environmental characteristics such as persistence and bio-accumulation, only direct toxic effects on certain aquatic organisms. The Committee bill, therefore, requires that the needed numerical criteria be developed, though they can be supplemented by biological monitoring and assessment methods as they are developed.

Revisions to water quality standards regulations originally proposed by EPA in late 1982 were not consistent with the objectives and requirements of the Clean water Act. For that reason the Committee, when it considered the predecessor bill in the previous Congress, S. 431, felt obliged to propose incorporating into law language from EPA regulations expressing long-standing policies related to upgrading and downgrading of water quality standards and antidegradation. Subsequently, Administrator Ruckelshaus reversed his predecessor's efforts to weaken these policies, with the result that the final regulations do comport with the Clean Water Act in these key areas. Upon the Administrator's assurance that the Agency will aggressively implement these regulations and defend them from legal challenge, should they be challenged, the Committee agreed last year to delete certain parts of the bill with which the regulations now are consistent. Consequently, the bill before the Senate today does not contain the earlier language related to conditions under which water quality standards can be upgraded or downgraded, nor does it contain language to codify the antidegradation policy that is in the present regulations.

The fact that the Committee deleted these provisions should not be taken as a sign of diminished interest in the water quality standards program. Water quality standards are a vital supplement to the basic fabric of technology-based controls upon which the Clean Water Act relies. As the remaining best available technology requirements go into effect over the next few years, the water quality standards provisions of the Clean Water Act will become even more important. It is vitally important that the water quality standards program operate in such a way that it supports the objective of the Clean Water Act to restore and maintain the integrity of the Nation's waters.

Mr. President, I also wish to call attention to the problems of non-point source pollution. Non-point pollution sources are increasingly being identified as a major cause of the remaining water quality problems affecting America's streams and lakes. They were identified as a contributing factor for 94 percent of the stream segments State officials indicated have not met water quality standards in their 1980 water quality reports to EPA required under section 305(b) of the Clean Water Act. Twenty percent of the states making reports in 1982 said that non-point source pollution is the most important water quality problem in that State. And the State reports supporting a recent study of water quality improvements conducted by the Association of State and Interstate Water Pollution Control Agencies placed a similar or even greater emphasis on non-point sources.

This type of pollution comes from a variety of sources—some comes from city streets, some from mines, some from construction sites, some from forestry operations, and much of it from the erosion of our agricultural lands.

In terms of pollutant loadings, non-point sources are responsible for up to 76 percent of the oxygen-demanding organic materials that enter in our waterways, and up to 99 percent of the suspended solids, 85 percent of the dissolved solids, 92 percent of nitrogen, 94 percent of phosphorous, and 98 percent of the bacteria. They are also a major source of pesticides, lead, zinc, cadmium, and copper contaminants which enter the nation's waters. The problem is immense. For instance, each year about 20 tons of soil is eroded for every person in the United States. As much as half of this ends up in our waterways.

The impacts of these pollutant loadings can be very serious indeed. It can seriously affect aquatic wildlife, destroying spawning beds, reducing fish reproduction, and seriously interfering with the delicate food chain necessary to support wildlife. It interferes with our ability to enjoy water through fishing, swimming, and other recreational pursuits. It increases the amounts that municipalities and industries and sometimes even farmers have to spend to treat the water before they can use it. And it is a major cause of increasing amounts that we are spending in order to try to prevent continued degradation of our freshwater lakes.

But the costs associated with these non-point sources of pollution do not stop here. We are becoming increasingly concerned about future water shortages, and yet sediment from land erosion is filling 1 million acre-feet of valuable reservoir capacity every year. When we build new reservoirs, we have to allocate about 20 percent of our storage capacities solely for the purpose of storing the sediment that is carried into them. And every year we spend hundreds of millions of dollars to dredge the sediment out of reservoirs and navigation channels so that they can continue to perform their functions. The sediment also becomes deposited in irrigation ditches and drainage ditches, decreasing the capacity of the former to carry irrigation water and of the latter to carry off flood waters. Floods are more destructive because the sediment increases flood volumes, chokes off the natural capability of streams and rivers to carry flood waters out to sea. It is also the sediment, and not the water, that often creates most of the monetary damages associated with floods in urban areas. In an agricultural area the sediment deposits can seriously reduce the fertility of some of our most fertile agricultural lands.

It is becoming increasingly evident that if we are going to achieve the goals of the Clean Water Act, the goals towards which we have already expended tens of billions of dollars, we are going to have to do something about non-point source pollution. It is also evident that we need to begin to do something about it soon. Through the section 208 planning process, we collected a substantial amount of information relating to non-point source pollution—information that can provide a strong basis for beginning action. But because of the budget cuts and because of current inaction, some of this information is being irretrievably lost. The organizations that collected it are shutting down. The people who analyzed it are moving on to other jobs. It is time to get to work on dealing with this serious national problem before we have lost entirely the substantial amount of effort we have already put into understanding it.

The addition of a non-point source control program to the Act is thus a reasonable and necessary extension of the Act's existing requirements. It does not signal the discovery of a new problem. We have known about the problem for years and have taken pains to collect the information and carry out the planning needed to deal with it effectively. Nor does it imply that the point source control program at the heart of the Act has been a failure. To the contrary, the increasing relative importance of non-point sources results from our success in reducing point source pollution. As the point sources are cleaned up, most of the pollution that remains results from the sources that have not been dealt with—predominantly non-point sources. We are now at a point where we can begin to identify the specific areas where these controls are needed.

We do not need—and are not proposing—a program which would require every farmer, every city, every mine, every wood lot to implement controls. But we do need a targeted program that will begin quickly to identify serious non-point source problems and to abate them. The non-point provision developed by the Committee would do that. It would add a new section 319 to the Clean Water Act to require the development and implementation of non-point source programs by the States. As my colleagues on the Committee know, I favored a stronger bill with more requirements on States and polluters. But politically this is a very difficult issue, and it is important to start this effort with a strong consensus of support. We have achieved that. The bill was passed unanimously and enjoys broad support from the States and from affected interests. I am prepared to believe them when they say they will use these authorities fully and aggressively attack the nonpoint source problem. I expect every State to implement an effective program. If this approach fails, then of course we have to consider making the requirements stricter. But for now, the most important thing is to get started. I urge my colleagues to support this important new program in the Clean Water Act.

Funding for the non-point program is provided in two ways. First, the new section 319 of the Clean Water Act contains an authorization for $300 million over the next three years. These funds are to be used by States to implement approved non-point programs. They can be used for administrative support, for monitoring and research, and for other implementation purposes, such as on-site technical assistance and environmental monitoring. These funds may not be used, however, to provide cost-sharing support to persons for construction or utilization of best management practices, except for demonstration projects. States, of course, are free to provide State funds for cost-sharing if they choose to do so.

The second source of funds is a new one percent set aside of construction grant funds. This new paragraph (5) in section 205(j) of the Act would reserve funds for the same purposes as section 319 funds, with the same restrictions that affect Section 319 funds. The same State match also would be required. However, the provision in section 319(d)(2)(B) reserving one-third of allotted funds for special purposes would not apply to these funds.

I want to stress that these set-aside funds are intended to supplement the section 319 funds, not to substitute for them.

I also want to point out that S. 1128 would allow States to use their State Revolving Loan Funds, authorized by a new Title VI in the Clean Water Act, to fund nonpoint activities. However, there are fewer constraints on the use of these State funds than are placed on the use of the Federal funds authorized under section 319 or reserved under section 205(j)(5). The State Revolving Funds are to be used first for construction of publicly owned treatment works needed to assure maintenance of progress in completion of projects to meet the enforceable requirements of the Clean Water Act. After this condition is met, however, the Revolving Loan Fund can be used to make loans to individuals for implementation of best management practices. This flexibility should help rural States, like my own State of Vermont, achieve their clean water goals more efficiently.

I also want to call the attention of my colleagues to another important section of 1128, an amendment to Section 405 of the Clean Water Act which relates to the use and disposal of sewage sludge. I will acknowledge that this is not a particularly glamorous part of the Clean Water Act, but it is a very important one.

Sewage treatment plants are capable of incidental removal of some toxic pollutants from industrial sources discharging into the city sewage system and from households and other sources. From the point of view of water quality in the receiving waters, this is an advantage. However, many of these pollutants simply go into the sludge that is an unavoidable product of sewage treatment plant operation. The toxic pollutants render the sludge unfit for many use and disposal options that otherwise would be available and, as many of my colleagues are acutely aware, often put the city or town in a very difficult position regarding the use or disposal of the contaminated sludge.

For this reason, in the 1977 Clean Water Act Amendments Congress enacted a requirement that EPA within two years develop criteria for sludge use and disposal options. Unfortunately, the agency's response to this requirement has been abysmal. Not only have the required criteria not been published, it became apparent as we examined this program that it had received very little priority or attention at EPA until quite recently.

To encourage better performance by the Agency I offered an amendment to Section 405 of the Clean Water Act that was adopted by the Committee. The purposes of the amendment are to establish a new time frame for promulgation of sewage sludge use and disposal criteria, to require expedited regulation of problem contaminants, to provide a public health and environmental rational for sludge criteria development, and to establish deadlines for compliance with the sludge criteria.

The amendment also incorporates an Administration proposal concerning permits for sludge disposal. This provision is needed because present law does not specifically define compliance mechanisms for sludge criteria. The provision allows flexibility on the choice of permit programs. Any of several Federal permit programs or an approved state program can be used, or the amendment authorize permits solely to impose the sludge criteria if no appropriate permit program is available.

I also want to point out the important relationship between sewage sludge criteria and the pretreatment program. The national pretreatment program establishes technology-based requirements for industrial sources of pollution that discharge into sewage treatment plants rather than directly into the water. These indirect dischargers are an enormous source of toxic pollutants and that is why a national pretreatment program is needed. Without sludge criteria, however, industry easily can simply transfer its toxic pollutants over to the city's ledger where they become a difficult economic and political problem.

As I mentioned earlier, many of these toxic pollutants either are discharged by the city into the waterway, which may put the city in jeopardy of violation of its discharge permit, or they are transferred into the sludge, thus making it more difficult for the city to find appropriate sludge management alternatives. In either case the sludge criteria and an effective pretreatment program work together to encourage recycling and reuse of toxic pollutants by industries.

In 1977, Congress added Section 301(h) to the Clean Water Act allowing coastal sewage treatment facilities to apply for waiver from the secondary treatment requirement. It was intended to be an extremely limited waiver, available only to discharges into deep marine waters that because of currents or tidal action are well flushed. The Committee report for the 1977 bill speaks eloquently of the built-in safeguards that would limit the availability of the waiver and prevent any environmental harm from occurring.

Unfortunately, we quickly learned an important lesson about loopholes: it is very hard to keep them small. As time has passed, more and more applications have been submitted, and cities are understandably reluctant to get on with construction to meet the Act's requirements as long as they think they have a chance for a waiver. The courts have been interpreted that section of the law as allowing the discharge of raw sewage into estuaries.

It was not the intent of Congress to allow untreated sewage, often containing large amounts of toxic chemicals, to be discharged into slow-flushing estuaries. Therefore, the Committee has adopted several provisions which would reduce the potential harm from marine sewage discharges and restore Congressional intent.

First, the Committee has made it clear that the discharge of toxic chemicals into the marine environment must be limited. Facilities seeking a waiver must be in compliance with applicable pretreatment regulations. Absent categorical standards, facilities serving a population of 5,000 persons or more must have adopted and be enforcing a pretreatment program. This provision will help to protect marine bottom-dwelling organisms, shellfish and fish which can be tainted by toxic pollutants.

Second, the bill requires that sewage receive at least a minimum or primary treatment. Since our coastal waters are heavily used for swimming, boating, clamming and oystering, it would not be appropriate to allow the discharge of untreated sewage.

About one-fourth of the pending waiver applications are for facilities discharging into semi-enclosed, slow-flushing bays. To assure adequate mixing and flushing of wastes the Committee has required that waivers not be given to facilities that would discharge into waters that are already stressed by pollution. If we are to restore the nation's waters, we must not allow sewage pollution to be added to waters which are not meeting the goals and objectives of the Act.

The Committee bill incorporates a provision to prevent backsliding in NPDES permits. The antibacksliding policy is not an addition to the Clean Water Act. It is inherent in the Act's policy of requiring reasonable further progress toward the national goal of elimination of discharge of pollutants. The intent of this provision is to assure that pollution reductions and concomitant water quality gains, once achieved, will not be yielded back except under narrow circumstances.

For example, it would be contrary to the Clean Water Act to allow one discharger to increase his pollution merely because another discharger has reduced his. Even if the increased discharge would not violate the minimum level of water quality specified in the standard, it would degrade actual water quality and negate the water quality improvements achieved by reduction of the first discharger's pollution level. Similarly, water quality gains achieved by a successful nonpoint source program should not be yielded over to point source dischargers. As water quality improves, the improvement should be protected.

The antibacksliding provision clarifies that where water quality exceeds the minimum specified in a standard, waste load allocation, total maximum daily loads, or other permitting standards may be revised only if consistent with the antidegradation policy. The reference to "other permitting standard" is deliberately broad to encompass all other mechanisms for establishing permit limits.

Similarly, the bill restricts backsliding in permits written according to "best professional judgment" in the absence of promulgated effluent limitation guidelines. The permittee is precluded from seeking a weaker permit on the grounds that a subsequently promulgated effluent limitation guideline would have led to a permit condition that is less stringent than those already being attained.

Mr. President, these remarks do not cover every aspect of this bill, but they do touch upon some of its most important provisions. A very great deal of effort by the Committee went into drafting this bill. I commend it to my colleagues without reservation.

Mr. President, I suggest the absence of a quorum.

The **PRESIDING OFFICER.** The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. **CHAFEE.** Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The **PRESIDING OFFICER** (Mr. HATCH.) Without objection, it is so ordered.

Mr. **CHAFEE.** Mr. President, I thought I might give a little report for those listening in their offices on where we stand. We are in the course of negotiations, that is, Senators STAFFORD, BENTSEN, MITCHELL, and I, with those who were upset about the formula, and we are making every effort to arrive at some solution. Whether we will be successful or not we are not sure but in any event we are lacking now some further figures.

Those will be available to us in the morning and it is our hope that we can work something out in the morning.

Mr. **MOYNIHAN.** Mr. President, I simply express appreciation to the managers of the bill and to our beloved chairman for this effort. We hope it will succeed and we will learn more tomorrow.

This is very much in the spirit of the Committee on Environment and Public Works. We have managed to stay together over many a long year on many complex subjects, and I hope we can do it on this as well.

I thank all concerned.

Mr. **LEVIN.** Mr. President, if the manager will yield, I also wish to express our appreciation.

I know the effort is made in good faith. Hopefully we can work it out. It is appreciated because the feelings obviously are strong when these kind of formula changes are made. We do appreciate the effort which everyone is making here.

Mr. **CHAFEE.** I express my appreciation to the Senator from New York, the Senator from Michigan, and the Senator from Minnesota.

We also have a difficulty with the Alaskan Senators and we are also working on that. They are not available right now and it would be our hope that we could arrive at some kind of a resolution of that in the morning as well.

Where is all of this going to lead us? Obviously, it is our hope that we can get these matters squared away and we can then proceed to the consideration of the bill. And how rapidly we can dispose of it I do not know.

But we certainly are trying to proceed as fast as we can.

Mr. President, I suggest the absence of a quorum.

The **PRESIDING OFFICER.** The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. **DOLE.** Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The **PRESIDING OFFICER.** Without objection, it is so order.

Mr. **DOLE.** Mr. President, what is the pending business?

The **PRESIDING OFFICER.** The question is on the motion to proceed to the consideration of S. 1128.

Mr. **DOLE.** Mr. President, let me indicate to my colleagues who may want to know about plans for the evening that there will be no rollcall votes this evening. There have been discussions throughout the afternoon on a couple of very contentious matters dealing with clean water. It is my understanding there may be some hope for resolution of those and we will be able to move rather quickly. We hope to be back on the bill at 12 noon tomorrow.

We also hope yet this evening to approve the nomination of Martha Seger. That is now in the process of being cleared on the Democratic side. I am advised by the chairman of the Senate Banking Committee that if it is cleared, it can be done by a voice vote.

So I indicate to my colleagues that there will be no rollcall votes this evening and we will come in tomorrow morning at 9 a.m. There are six special orders that should take us to 10:30. At 10:40, we are to assemble to attend a joint meeting of the Congress to hear Prime Minister Ghandi. Then at 12 noon we hope to be back on S. 1128, and specifically the motion to proceed to S. 1128, the clean water bill.

Mr. President, I suggest the absence of a quorum.

The **PRESIDING OFFICER**. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. **HOLLINGS**. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The **PRESIDING OFFICER**. Without objection, it is so ordered.

CLEAN WATER ACT AMENDMENTS OF 1985

Mr. **DOLE**. Mr. President, what is the pending business?

The **PRESIDING OFFICER**. The pending business is the motion to proceed to the consideration of S. 1128.

The clerk will report the pending business.

The assistant legislative clerk read as follows:

A motion to proceed to S. 1128, a bill to amend the Clean Water Act, and for other purposes.

The **PRESIDING OFFICER**. The question is on agreeing to the motion.

The motion was agreed to.

The **PRESIDING OFFICER**. The clerk will report the bill.

The legislative clerk read as follows:

A bill (S. 1128) to amend the Clean Water Act, and for other purposes.

The Senate proceeded to consider the bill.

Mr. **CHAFEE**. Mr. President, I will give a status report of where we are now. We are on the bill. We would ask those who have amendments to come to the floor and present any amendments that they may have. We know of an amendment by Senator STEVENS and Senator MURKOWSKI, and they are on their way now to present that amendment. That has been agreed to by a colloquy. There will be no rollcall vote on that.

At 2:45 p.m. we will be presenting a committee amendment dealing with some revision to the formula as worked out in a compromise with Senators DURENBERGER, MOYNIHAN, D'AMATO, LEVIN, CRANSTON, and Senator HAWKINS was also interested in it.

It would be our intention, Mr. President, to move as rapidly as we can with this legislation. Once the committee amendment is presented on the changes in the formula, we would assume that could be adopted by a voice vote. If there are no further amendments after that, we would be hopeful to get to final passage not long thereafter. We are talking about in the area of 3:30 or thereabouts.

So we are ready to do business and are awaiting at the moment for the amendment of the Senators from Alaska.

Mr. President, I suggest the absence of a quorum.

The **PRESIDING OFFICER**. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. **DIXON**. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The **PRESIDING OFFICER**. Without objection, it is so ordered.

Mr. **LAUTENBERG**. Mr. President, I rise in strong support of S. 1128, the Clean Water Act Amendments of 1985. The Environment and Public Works Committee has devoted substantial time and effort this year to the Clean Water Act. I commend the committee leadership for its efforts in bringing this bill to the Senate floor early in this session of Congress.

In the early 1970's, the people of this country made a fundamental decision that they wanted a concerted effort to clean up the Nation's waters—waters that are used for fishing, swimming, recreation, and drinking water.

This decision was made because of our growing awareness of, and concern about, water pollution. News accounts told us about Lake Erie being "dead," the polluted Cuyahoga River in Ohio so filled with oil and debris that it caught fire, millions of gallons of raw wastewaters being dumped into the country's major rivers, such as the Hudson River, and many fish kills and oil spills.

The Congress responded by passing the Federal Water Pollution Control Act Amendments of 1972. This act established a goal—to restore and maintain the integrity of the Nation's waters—which captured the essence of the Nation's desire for clean water.

During the 13 years this act has been implemented, impressive strides have been made in cleaning up our Nation's waters. But much remains to be done. The Clean Water Act Amendments of 1985 include a number of provisions which address problems which are preventing us from achieving the goal of the Clean Water Act.

Of great importance is future funding for the construction grants program. Since passage of the Clean Water Act in 1972, Federal, State, and local sources have invested more than $56 billion in municipal wastewater treatment facilities resulting in the construction or improvement of approximately 3,500 treatment facilities. Properly running sewage treatment facilities are an essential component for cleaning up the Nation's waters. For example, sewage treatment plants in 1983 were removing 65 percent more of the two principal conventional pollutants—suspended solids and biological oxygen demand—than they were a decade earlier.

Yet it is clear that the existing construction grants program is inadequate to meet remaining national needs. According to EPA eligible construction needs through the year 2000 are $53 billion. Ineligible needs—those needs not eligible for Federal funding under the Clean Water Act—are more than $50 billion. According to the latest estimates, New Jersey alone has $4.5 billion in eligible funding needs. New Jersey only receives approximately $100 million per year in existing Federal construction grant funding. Therefore it is imperative that we implement a new method of financing sewage facilities. A creative framework, which had its origins in New Jersey, is the concept of revolving loans.

The Clean Water Act Amendments of 1985 adopted this concept and will move us closer to the goal of providing an adequate source of stable funding for sewage treatment facilities. S. 1128 would authorize $18 billion over 9 years for Federal sewer construction grants and loans. Under the bill, the Federal Government will gradually reduce categorical grants for sewage treatment facilities as it phases in a program of grants for States to capitalize State revolving loan funds. These funds will provide the capital for municipal wastewater treatment facilities in the future. States can make low or no interest loans available to communities for construction of treatment facilities. As loans are repaid to the State revolving loan funds, the funds will be able to loan money to additional communities.

In addition, Mr. President, this bill will help spur the construction of needed sewerage facilities. In the case of municipalities which proceed to begin construction with their own funds, refinancing is permitted from a State revolving loan fund. Presently, most municipalities wait until it is their turn to receive Federal construction grant funding before they begin constructing needed facilities. This refinancing feature of the revolving loan program would eliminate the disincentive for municipalities to move ahead quickly with construction that now exists with the grants program. Municipalities are facing a 1988 deadline for installing sewerage treatment facilities which provide secondary treatment. EPA has threatened to restrict development in municipalities which are not in compliance with the 1988 deadline. New Jersey right now has imposed sewer bans in 70 municipalities and has warned over 100 additional municipalities that they face such bans if the discharge from their sewerage plants will not comply with requirements of the Clean Water Act. The reimbursement provisions in S. 1128 should stimulate cities to meet the 1988 deadline.

Under the bill, States will have to enact legislation to give a legal entity of the State the powers prescribed in the act. During consideration of S. 1128 in the Environmental Pollution Subcommittee, the committee agreed that this legal entity can be an existing or new State entity or agency. When States enact legislation to implement State revolving loans funds, they will have the flexibility to determine how the fund will operate subject to the requirements of this provision of the Clean Water Act. For example, States would be able to establish loan terms based on the financial needs of municipalities with easier loan terms available to poorer municipalities. States can decide to initiate their loan funds prior to fiscal year 1989, the year they are required to do so. When States enact revolving loan legislation, they can determine whether to begin using their construction grant funds to capitalize their revolving loan funds prior to fiscal year 1989 and if so, under what terms. Discussion during our subcommittee markup clarified that it is the committee's intent that EPA, in issuing grants, would be bound by these State decisions.

Mr. President, I believe that the revolving loan concept contained in the bill will provide a stable source of funding for the construction of sewerage facilities while providing States with the flexibility to minimize the financial burden of these facilities on local municipalities.

The Clean Water Act Amendments also include a revised allocation formula for construction grants funding. This formula uses the latest estimates of construction grants needs from the 1984 EPA Needs Survey. By using these figures, New Jersey's allocation would increase, reflecting the State's large sewerage facility needs.

S. 1123 also includes S. 30, the Raw Sewage Abatement Act of 1985. This legislation, which I sponsored, limits the discharge of raw sewage by New York City. New York City is the only major municipality in the country which still discharges raw sewage and wastewater into surrounding waters, without preliminary treatment of its wastes. It does so because of the absence of sewage treatment facilities in two major drainage areas in New York City. Today, New York City is dumping approximately 230 million gallons of raw sewage a day into the Hudson and East Rivers. This practice has gone on for decades. Two court-ordered deadlines to cease this practice have long passed. My amendment will impose a cap on raw sewage discharges from the drainage areas in New York City currently without treatment plants if the city fails to meet the deadlines for achieving advanced preliminary treatment contained in its current consent decree. If these deadlines are met, the cap will be unnecessary because all raw sewage discharges will cease. If the city fails to meet these deadlines, a cap will be imposed in the drainage area in violation of the decree. It will stay in effect until the city brings the affected plant online and it operates successfully for 6 months.

The imposition of a cap on raw sewage discharges upon a violation of the consent decree in effect says to the city of New York, "You cannot continue to grow without restraint if you cannot treat your wastes."

Upon violation of the cap, the city would be subject to the enforcement provisions in section 309 of the Clean Water Act. These penalties would be in addition to those provided for violation of the consent decree. They include tough civil and criminal penalties, and would enable EPA to seek a temporary or permanent injunction against the city, to bring civil actions against the city, and to initiate criminal prosecution in cases of negligence or falsification of records.

With the changes proposed this year to section 309 of the Clean Water Act, a violation of the cap imposed by this amendment could result in substantial penalties of up to $50,000 a day. A violation stemming from a criminal conviction could lead to imprisonment.

Finally, Mr. President, the legislation states that it is the sense of the Congress that EPA should not extend the deadlines in the city's existing consent decree any further.

New Jersey has had its share of water quality problems. But not one New Jersey municipality is discharging raw sewage. Treatment plants in northern New Jersey are all achieving advanced preliminary treatment, and the major plants serving northern New Jersey are achieving secondary treatment.

The New Jersey Department of Environmental Protection has imposed 50 sewer hookup bans in a number of New Jersey municipalities to improve compliance with the Clean Water Act. Several communities may finance the upgrading of their sewage treatment plants to secondary treatment without any Federal or State aid. In some cases, the Department of Environmental Protection in New Jersey is requiring private sector parties to contribute to local efforts to upgrade sewage treatment facilities as the price of securing a sewer hookup permit and proceeding with planned development.

Mr. President, New Jersey and New York do not need to grow at each others' expense. Regional growth is good for both States. By the same token, Mr. Presdient, this growth should be accompanied by appropriate environmental protection. It must not come at the expense of the environment. It must not come at the expense of New Jersey's tourist and commercial and recreational fishing industries.

Mr. President, these provisions in S. 1128 will provide strong incentives for New York City to comply with its consent decree and bring its sewage treatment plants on line as quickly as possible.

S. 1123 contains a number of other provisions which will strengthen this Nation's effort to clean up its water. These include:

Requiring the cleanup of toxic hot spots;

Establishing a nonpoint source pollution control program;

Restricting the use of nonconventional pollutants modifications and fundamentally different factor modifications;

Clarifying the Clean Water Act's prohibition of backsliding on effluent limitations;

Establishing a national estuary program to solve pollution problems in interstate estuaries such as Delaware Bay and the Hudson-Raritan estuary; and

Requiring EPA to establish toxic contaminant criteria for sewage sludge use and disposal and to establish a public health and environmental protection basis for these criteria.

Mr. President, I want to make clear my position on two amendments which may be offered to S. 1128.

This bill gives EPA authority to use civil administrative penalties for violations of sections 402 and 404 of the Clean Water Act. I understand an amendment may be offered which would eliminate section 404 violations from the civil administrative penalty provisions contained in S. 1128.

Mr. President, I will oppose this amendment. Administrative civil penalties, now used on numerous environmental laws, offer an effective enforcement mechanism for handling a large number of violations. The current system of requiring the United States to go to the Federal courts to seek enforcement of section 404 is inadequate. A 1984 Office of Technology Assessment Report on wetlands concluded, "the Corps has experienced significant problems in prosecuting violators." The OTA found that U.S. attorneys often are reluctant to handle section 404 cases because cases are regarded as of lesser importance than other cases. Moreover, evidence presented at an oversight hearing on the section 404 program this past Monday shows that there are serious deficiencies in the Corp's existing enforcement program. Amendment to eliminate civil administrative penalties for the section 404 program will, if agreed to, remove an effective enforcement tool from EPA.

A second amendment which may be offered would extend the maximum length of permits governing discharges into waterways from industrial and other facilities to 10 years from the existing 5 years. This issue was considered at length by the Environment and Public Works Committee, which decided to leave the maximum permit period at 5 years. The primary rational for this amendment is that it will help reduce the backlog of permit applications. The testimony received by the committee, however, was that the backlog already is shrinking. In addition, a 10 year permit provision could result in less stringent pollution control of toxic pollutants. I believe the 5-year permit term plays an important role in improving water quality. Therefore, I will oppose any amendment to extend the maximum permit term to 10 years.

Mr. President, I believe that enactment of the Clean Water Act Amendments of 1985 represents a positive step in the Nation's effort to clean up its water resources. Again, I commend Senators CHAFEE and MITCHELL and all the staff that worked so hard to bring this bill to the floor.

AMENDMENT NO. 333

Mr. DIXON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Illinois [Mr. DIXON], for himself and Mr. SIMON, proposes an amendment numbered 333.

Mr. DIXON. I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 78, before line 1, insert the following new section and renumber succeeding sections accordingly:

CHICAGO TUNNEL AND RESERVOIR PROJECT

SEC. 203. Section 201(g)(1) of the Clean Water Act is amended by adding the following sentence: "The Chicago tunnel and reservoir project may receive grants under the previous sentence without regard to the limitation contained therein, if the Administrator determines that such project meets the cost-effectiveness requirements of sections 217 and 218 without any redesign or reconstruction, and the Governor of the affected State demonstrates to the satisfaction of the Administrator the water quality benefits of such project.".

Mr. DIXON. Mr. President, I rise today with my distinguished colleague, Senator PAUL SIMON of Illinois, to offer an amendment to the Clean Water Act amendments which will clarify the eligibility of a cost-effective combined sewer overflow system, the Chicago tunnel and reservoir project [TARP]. The amendment merely lifts a 20 percent cap on the use the Governor may make of the Governor's discretionary fund and does not cost any additional funds.

TARP consists of approximately 110.2 miles of tunnels, connecting structures and pumping stations, all integral parts of the water pollution control system for the Chicago metropolitan area. This amendment is critical to the completion of TARP, and the prevention of the discharge of raw sewage and stormwater, with the resulting pollution and flooding problems.

The 1981 amendments to the Clean Water Act provide that, beginning in October 1984, combined sewer overflow elimination systems, such as TARP, are only eligible for funding from the Governor's discretionary fund of an amount up to 20 percent of the State's allotment. The Governor's discretionary fund, however, is insufficient to provide the funding needed for the next segment of TARP. Thus, because combined sewer overflow projects are no longer eligible for Federal funding, except for the Governor's fund, and because this pot is too small to fund the next segment of TARP, the subject amendment is needed to complete TARP.

I can assure my colleagues that the support for this amendment is bipartisan in nature. The distinguished Governor of Illinois, James Thompson, is very concerned about the completion of TARP and has worked with Senator SIMON and myself on this amendment. Governor Thompson has also discussed the issue with Senator CHAFEE.

The Governor has proposed to spend, and the State of Illinois is already spending, substantial sums on TARP. This local commitment of funds indicates the high priority the State places upon the completion of TARP. The combined sewer overflow program in Chicago is important because without such a program, the level of pollution would be equivalent to the refuse of 1 million people being dumped into the Illinois River without treatment every sixth day. This clearly is a pollution problem that the Clean Water Act should address. The 20 percent cap effectively prevents the Governor from meeting local needs.

At the present time, TARP is approximately 50 percent completed. Approximately 47 miles of tunnels have been completed, 3½ miles are now under construction, and 60 miles are yet unfunded. In addition, all of the pumping stations are completed. The next segment to be constructed will service the western suburbs outside Chicago and will cost between $60 and

$75 million, which is much more than the present cap can provide. It would make no economic or practical sense to deny adequate funding to a project which is half completed. Stormwater and flooding problems are particularly acute in these western suburbs.

To date, the TARP project has been completed on schedule and the final payment will be less than originally anticipated. The estimated revised 1985 cost for the remaining TARP projects is $1.028 billion, a reduction of $303.5 million or approximately 23 percent from the total cost of $1,331.5 billion shown on the 1985 budget.

Lifting the 20-percent cap is critical because if TARP is not completed or completion is delayed significantly, a number of outfall conditional permits granted by the EPA to Illinois communities would be in violation of national pollutant discharge elimination system requirements. The communities holding the outfall permits would probably have to construct treatment at each of the overflow points. The Federal cost of providing this treatment would be approximately $1.55 billion—or more than twice the cost of completing TARP. Thus, to deny the Governor the flexibility of using the discretionary fund in the manner best suited for local needs would be foolhardy economically, because we would end up spending twice as much as we would in the absence of the adoption of this amendment.

Let me stress that this amendment does not reopen the question of categorical eligibility and applies only to the Governor's discretionary authority to allocate the funds Illinois receives under the Sewer Grant Construction Program.

Therefore, I urge my colleagues to support this amendment to the Clean Water Act amendments.

Mr. SIMON. Mr. President, I rise in support of the amendment I am cosponsoring with my collegue, Senator DIXON. It will aid in the tunnel project of the Chicago Metropolitan Sanitary District. While it will cost eventually an estimated $751 million, the savings to the Federal Government will be over $800 million above that amount. If we do not go ahead, the cost will be approximately $1.55 billion. It has become crucial to the suburbs in the Chicago area. It is a project that has been of great benefit not only to the people in our country but to researchers in other countries. I am pleased to support it and hope that it has the support of this body.

Mr. DIXON. Mr. President, I say to my distinguished colleagues that this matter has been cleared on both sides with the distinguished manager of the bill [Mr. CHAFEE] and with the distinguished minority manager [Mr. MITCHELL]. If there is no objection to my amendment, I have nothing further to say.

Mr. CHAFEE. Mr. President, the Senator from Illinois is quite right. This is an unusual situation that Illinois has with this TARP project, which, I understand, is some 110 miles long with its connecting intercepts and laterals to it. The bill itself has a limitation of 20 percent that can be used by the Governor set aside for discretionary purposes.

The situation in Illinois is such that they have a mammoth program that the legislature has enacted with their own funds for waste treatment disposal throughout the State. This would permit the Governor to exceed that discretionary limitation of 20 percent in the case of Illinois, where they have this particular project, as the Senator from Illinois has designated, known as TARP. So, speaking for this side, we are in support of the amendment.

The PRESIDING OFFICER. The Senator from Maine.

Mr. MITCHELL. Mr. President, I commend the Senator from Illinois [Mr. DIXON] for the diligence and vigor with which he has represented his constituents in this matter. I associate myself with the remarks previously made. We have no objection to the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 333) was agreed to.

Mr. DIXON. Mr. President, I thank the distinguished managers of the bill on behalf of my colleague [Mr. SIMON], Governor Thompson, myself, and the entire membership of the Illinois delegation for the courtesy and kindness they accorded us on this occasion.

Mr. CHAFEE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, it is my understanding that the House of Representatives' version of the Clean Water Act Amendments of 1985 is likely to contain a provision on the remining of abandoned coal mine sites with preexisting pollutional discharges.

Mr. President, this provision provides incentives to coal operators to remine such areas and so improve the water quality of these areas.

Nationally there are in excess of 1.5 million acres of abandoned mine lands that have not been reclaimed to standards required by the Surface Mining Control and Reclamation Act of 1977 [SMCRA]. The vast majority of these lands and the streams adversely affected by sediment or acidity from such abandoned operations are located in the Appalachian region. The Abandoned Mine Land [AML] Program created under title IV of SMCRA established a fund to reclaim these sites where there is no continuing reclamation responsibility under Federal or State law. The AML fund is generated by collection of a reclamation fee levied on coal operators. The fee collection began in 1978 and will continue through 1992, and it is expected that approximately $3 billion will be collected during that period. These resources, however, are inadequate to deal with the full magnitude of the abandoned mine land problem. It is estimated that the fund will resolve only about 20 percent of the problem areas.

Therefore, the water quality problems associated with many of these sites will continue unless the coal industry is given the incentive to remine and consequently reclaim these areas.

It is estimated that as much as 40-50 percent of these lands contain additional reserves that can be mined today with economic and land reclamation benefits. However, a substantial percentage of those sites will not be reclaimed and remined unless a limited modification from the applicable Clean Water Act effluent limits is enacted.

The advantages of such a provision are to provide a source of economically competitive coal and to improve water quality. Coal produced from remining operations is likely to be very competitive on the coal export market. Old gob piles and abandonded mine sites are environmental hazards. A remining provision would create a useful incentive to remove those hazards.

In addition, it will provide an increased reserve base which will ensure future employment and a continuing tax base in traditional mining areas. This is particularly important given the scarcity of virgin lands in many established mining communities.

Mr. President, I ask the Senators who will be conferees whether they would seriously consider accepting the House provision in conference, so that this vital environmental, economic, and trade issue can be addressed.

Mr. CHAFEE. Mr. President, I assure the distinguished minority leader that I am willing to give all possible consideration to adoption of the House remaining provision in conference. I can see the value in a program that will result in enhanced water quality as a benefit of mining abandoned sites.

Mr. MITCHELL. Mr. President, I assure the distinguished minority leader of my willingness to work to assess and develop an appropriate remedy on this vital matter that will be acceptable to all interested parties. I acknowledge and support the importance of adopting a program on this matter.

Mr. BYRD. Mr. President, I thank the distinguished Senators who are managing the pending measure. I thank them for their support and for their assurance that they will do everything they can in conference in support of this proposal.

CLEAN WATER AMENDMENTS OF 1985

The Senate resumed consideration of S. 1128.

AMENDMENT NO. 334

Mr. STEVENS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Alaska [Mr. STEVENS] for himself and Mr. MURKOWSKI proposes an amendment numbered 334.

Mr. STEVENS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 76, after line 18, insert the following:

"SEC. 125(a) Not later than October 12, 1985, the Administrator and the Secretary of the Army shall enter into an agreement to designate a lead agency and to process permits required under section 402 and section 404 of the Clean Water Act, where both such sections apply, for discharges associated with the construction and operation of log transfer facilities.

"(b) The requirements of sections 301(a) and 402(a) of the Clean Water Act shall be stayed until October 12, 1985, or until an agreement is entered into under subsection (a), whichever is earlier, for discharges associated with such facilities, except discharges of dredged or fill material.

"(c) Such agreement shall be developed to assure that, to the maximum extent practicable, duplication, needless paperwork and delay in the issuance of permits, and inequitable enforcement between and among facilities in different States, shall be eliminated.

"(d) Where both sections 402 and 404 of this Act apply, log transfer facilities that have received a permit under section 404 of this Act prior to the date of enactment of this section shall not be required to submit a new application for a permit under section 402 of this Act. If the Administrator determines that the terms of an existing permit under section 404 of this Act satisfies the applicable requirements of sections 301, 302, 306, 307, 308, and 403 of this Act, a separate application for a permit under section 402 shall not be required. In any case where the Administrator demonstrates, after an opportunity for a hearing, that the terms of an existing, permit under section 404 of this Act do not satisfy the applicable requirements of sections 301, 302, 306, 307, 308, and

403 of this Act, modifications to the existing permit under section 404 to incorporate such applicable requirements shall be issued by the Administrator as an alternative to issuance of a separate new permit under section 402.

"(e) For the purpose of this section, the term "log transfer facility" means a facility which is constructed in whole or in part in waters of the United States, and which is utilized for the purpose of transferring commercially harvested logs to or from a vessel or log raft, including the formation of a log raft."

Mr. STEVENS. Mr. President, this amendment pertains to log transfer facilities and it has been the subject of a long negotiation here in the past few days.

It does not provide the best solution to a very serious problem facing the timber industry in Alaska. It provides the best compromise solution that could be reach between the parties.

In my State there are many small logging concerns that have 5 to 10 employees. Usually the employees are really family members, who log from the Forest Service lands of our State. These people must comply with regulations from both State and Federal agencies to operate their log transfer facilities. Currently in Alaska these facilities are regulated under section 404 of the Clean Water Act section 401 State certification, section 10 of the Rivers and Harbors Act, and the Coastal Zone Consistency Management Program.

Now the EPA has sought to enforce section 402 requirements over log transfer facilities in my State, although it does not enforce these requirements in any other State.

I hope the Secretary and the Administrator will work out what would be known as a one-stop concept so that these small entities do not have to deal with yet another level of bureaucracy.

I think it is important for the Senate and everyone to understand that there are probably more Forest Service people in my State than there are loggers, and there are more Corps of Engineers people than there are Forest Service people, and now there will be more EPA people, than there are either Corps of Engineers or Forest Service people, involved in regulating the same small business people.

I am sure Members realize that I have been slightly reluctant to yield on the question of the basic amendment which was before us as submitted by the administration which would have specified that log transfer facilities are not point sources of pollution.

We have had a long negotiation, as I indicated, and this amendment represents the concensus of what is attainable now to try to reduce to a minimum the increased regulatory burden on this beseiged logging industry as the result of the EPA's extended jurisdiction.

This amendment requires the Administrator of the Environmental Protection Agency [EPA] and the Secretary of the Army to come up with an agreement as to how these two Agencies will handle permitting of log transfer facilities in Alaska by October 12, 1985. The Administrator and the Secretary are advised to highlight this date on their calendars. It is not a deadline to be ignored. I fully intend to seek drastic cuts in their funding if an agreement is not reached by the October deadline.

The Administrator and the Secretary should understand that their agreement should focus on those section 402 requirements that are necessary to cover discharges from logs. I suggest that they closely examine 40 CFR 122 to see which sections should apply to these type of facilities. Further, I would recommend the Secretary and Administrator consult with the Alaska Timber Task Force, of which the Corps of Engineers and EPA are members. This group has been meeting over the last year in an attempt to resolve this problem on a regional basis. Their experience and insight should be helpful in meeting the October 12, 1985, deadline.

I expect the agreement to contain workable and reasonable guidelines. I hope that the Secretary and the Administrator will give serious consideration to the economic burden additional requirements will have on the logging industry and balance that with the potential environmental impact that these facilities raise.

I am going to monitor the progress of this negotiation closely. I hope it will be successful. These Agencies have had a difficult time in the past in coming to an agreement. It can be done if people of good will work to assure that the regulatory processes that are mandated by this act do not lead to the demise of the logging industry. This would be the ultimate in regulation, I guess. It would be to just kill off the industry itself and there would be nothing more to regulate.

That is certainly not my goal and I do not think it is the goal of the Senate, and I am delighted that my two friends who are managing the bill, Senators CHAFEE and MITCHELL, as well as Senator STAFFORD, are willing to pursue the objective of obtaining an agreement that will carry out the intent of the act while at the same time allow these small entities in our State to continue logging pursuant to the permits they currently hold.

I compliment them for their willingness to proceed this far. There is reluctance on their part, too, I can assure the Senate.

But the circumstances are such that

my colleague, Senator Murkowski and I feel that we have no alternative but to really try to preserve this industry despite the extension of yet another Federal regulatory agency into their area of endeavor.

If my friend wishes to make any comments I will yield to the manager of the bill.

Again, I think it has been an act of courtesy and friendship that has led the managers of the bill to be so patient with my colleague and me. We were prepared to go to great lengths to extend our interest in this matter to the Senate and to describe it to the Senate, but I am glad we do not have to pursue that course, and I again, however, wish to make sure the Record indicates that if an agreement is not reached we might have to pursue that sometime in the future. I hope we will not have to do so.

Mr. STAFFORD. Mr. President, will my very able friend from Alaska yield?

Mr. STEVENS. I am happy to yield to my good friend.

Mr. STAFFORD. I will be pleased to be added as a cosponsor of the amendment if the Senator from Alaska wishes.

Mr. STEVENS. We are delighted to have the cosponsorship of the chairman of the committee, and I thank him.

I ask unanimous consent, Mr. President, that the distinguished Senator from Vermont [Mr. Stafford] and the majority leader, Mr. Dole, be added as cosponsors.

Mr. CHAFEE. I wish to be included in that request.

Mr. STEVENS. And the Senator from Rhode Island.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I commend both Senators from Alaska, Senators Stevens and Murkowski, for their vigilance on behalf of Alaska. We deal with many Senators here who represent their States ably, but I think no two Senators do it with more force, vigor, persistence than do Senators Stevens and Murkowski. And I have been dealing with both of those Senators for I guess well over a month now in connection with this.

Mr. MURKOWSKI. Mr. President, as the Senate considers the amendment my colleague, Mr. Stevens, and I have offered, I ask that the distinguished Senator from Rhode Island discuss some features of this proposal with Senator Stevens and myself.

Would the Senator from Rhode Island agree that the purpose of this amendment is to compel the EPA and Corps of Engineers to enter into an agreement whereby one of those agencies will process a permit that meets the requirements of sections 404 and 402 as required for log transfer facilities?

Mr. CHAFEE. The Senator is correct. I might add, Mr. President, that this matter has been discussed at some length among the members of the Environment and Public Works Committee. The committee has corresponded with the Administrator of EPA, and we are informed that the Agency has the authority to enter into the agreement as set forth in the amendment.

Mr. President, I ask unanimous consent that the May 21, 1985 letter from EPA Administrator Thomas to Senator Stafford and myself, be printed in the Record. This letter sets forth the authority of the agencies under their respective programs.

There being no objection, the letter was ordered to be printed in the Record, as follows:

U.S. Environmental
Protection Agency,
Washington, DC, May 21, 1985.

Hon. Robert T. Stafford,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

Dear Mr. Chairman: Thank you for your letter of May 8, 1985 regarding the Committee's concerns about the coverage of log transfer facilities (LTFs) under the Clean Water Act (the Act). As you are aware, the Agency has been actively working on this matter since October 1983, and appreciates the opportunity to address the issues your Committee has raised.

You have asked for our opinion as to whether statutory authority exists either to require that section 404 permits contain requirements to regulate the discharge of pollutants associated with the operation of LTFs or to issue joint or consolidated permits to LTFs under the authority of both sections 404 and 402. With respect to the first question, the nature of the pollutants discharged from an LTF will determine whether authority exists under section 402 or 404 to regulate that discharge. Section 301(a) of the Act prohibits the discharge of any pollutant into waters of the United States without a permit. Section 402 authorizes the Administrator of EPA to issue permits for the discharge of all pollutants, except as provided in section 404. Under section 404, the Secretary of the Army may issue permits for the discharge of dredged or fill material.

Thus, the Administration may issue a permit for the discharge of all pollutants, except those regulated under section 404 (i.e., dredged or fill material) for which only the Secretary of the Army may issue permits. These two sections are intended to regulate distinct pollutants and activities and thus, are not redundant in coverage. Moreover, since each section is specific as to its scope of authority, section 404 would not authorize the imposition of permit conditions to regulate the discharge of pollutants other than dredged or fill material. Any permit issued under the CWA, whether under the authority of section 402 or 404, is subject to the provisions of section 401 of the Act, whereby the State must certify that the discharge will comply with all applicable State requirements. Therefore, it is possible that a State may request that certain conditions be placed in both the 404 dredge or fill permit and the NPDES discharge permit. In such a case, those terms and conditions would be implemented and enforced in accordance with the appropriate statutory authority of the respective federal Agencies.

With respect to the second question, where both a 402 and 404 permit are required for an LTP operation, there is no reason why a joint or consolidated permit cannot be issued, so long as all applicable requirements of each program are satisfied.

You have further asked us to review our programs to detemine if there are duplicative regulatory requirements for these two programs. As indicated above, section 402 and 404 permits are intended to address separate types of discharges and different environmental concerns and are, therefore, not substantively duplicative. Since there is authority to issue joint 402/404 permits, the Agency will work to coordinate the issuance of such permits in the future to avoid any duplication and minimize procedural burdens. However, you should be aware that the majority of existing LTPs in Alaska (approximately 90) have already been issued 404 permits. EPA could not retroactively issue a joint permit to facilities already holding a 404 permit. However, the Agency could issue NPDES permits consistent with certain terms and conditions of the facility's existing 404 permit where it determines such terms and conditions are appropriate to control the operational discharges.

The Agency recognizes the unique economic circumstances and the small business nature of many of the operators of these facilities. We will, therefore, continue to work to avoid undue administrative and economic burdens on the industry compatible with our statutory responsibilities. As part of this effort, we will fully explore the possibilities for joint permitting and general permits. The general permit approach has significant potential for reductions in permit application monitoring and paperwork costs.

While we are investigating these options, we will issue individual NPDES permits, as needed, in the near future. We expect to make a decision on our long term permitting strategy before there is a need for a large scale individual permitting operation.

I hope this has been responsive to your questions. Please feel free to call on me if you need any further clarifications.

Sincerely,

LEE M. THOMAS.

Mr. MURKOWSKI. This amendment sets a firm deadline on the agencies to enter into an agreement on or before October 12, 1985. Are we in complete agreement that the agencies must begin to negotiate the agreement immediately, and that they must complete the agreement before October 12, 1985?

Mr. CHAFEE. Again, the Senator is correct. I expect the corps and the EPA to commence discussions tomorrow to develop the agreement.

Mr. STEVENS. Mr. President, will my colleague from Alaska yield?

I am greatly concerned that there be no enforcement or issuance of section 402 permits for existing log transfer facilities by the EPA until October 12, when we expect an agreement will be reached. The amendment addresses this concern. However, I ask what the Environment and Public Works Committee would intend to do in the event that the agencies ignore the mandate of the amendment and fail to reach an agreement on or before October 12?

Mr. STAFFORD. Mr. President, if the Senator from Alaska will yield on that point, as chairman of the Environment and Public Works Committee, I pledge my full support to the Senators from Alaska on this amendment. The EPA and the Corps of Engineers must abide by the intent of the Senate in completing an agreement by October 12. The staff of the committee will continually monitor progress on this matter, and will be vigilant in ensuring that the agencies meet the deadline.

Mr. STEVENS. Mr. President, I thank Senator STAFFORD.

There must be an assurance that the agencies will meet the deadline. They have not been able to work together on this matter for 2 years, and the logging industry in Alaska simply cannot continue to spend time and effort in working on needlessly duplicative permits while the agencies procrastinate.

Mr. CHAFEE. Mr. President, if the Senator would yield on this point, the amendment now calls for a stay of enforcement of the section 402 requirements between now and October 12. The agencies must meet that deadline. If they do not, then I would support a measure to extend the stay of enforcement for a further limited period of time and perhaps other steps to force the agencies to reach the agreement.

Mr. STAFFORD. Mr. President, if the Senator from Alaska will yield, I, too, would support such an extension of the enforcement stay if the agencies fail to abide by the amendment.

Mr. DOLE. Mr. President, if the Senator from Alaska will yield, I understand that this matter of 402 and 404 permits is of deep concern to my colleagues from Alaska. The majority leader has been involved in working with the Senators from Alaska, and the Environment and Public Works Committee to fashion this agreement.

Let me say, Mr. President, that a great deal of time and effort has been spent by Senators to arrive at this agreement. We simply cannot tolerate the EPA or the Corps of Engineers ignoring the clear intent of this body to enter an agreement by October 12. I would join with my colleagues in extending the enforcement stay, if that is necessary.

But let me add, Mr. President, that the agencies must be placed on notice that to ignore our clear direction on this matter could result in other sanctions. For example, by October, the Senate will likely be considering funding measures affecting the corps and the EPA. If they ignore this amendment, then the Senator from Kansas will seriously entertain measures to terminate specific funding for either or both agencies.

Mr. STEVENS. Mr. President, I want these agencies to know that, as a member of the Appropriations Committee, I will not hesitate to seek cuts in funding for both agencies if it even looks like they intend to ignore the mandate of this body.

Mr. MURKOWSKI. Mr. President, will my colleague yield?

Mr. STEVENS. I yield.

Mr. MURKOWSKI. Mr. President, I appreciate the cooperation of the Senator from Rhode Island, Senator Chafee, and that of Senator Stafford, the chairman of the Environment and Public Works Committee. In addition, the majority leader has been instrumental in helping the parties reach an agreement on this matter, and I am grateful for this assistance.

Finally, Mr. President, my friend, the senior Senator from Alaska, Ted Stevens, must be commended for the time and effort he has given in resolving this matter. He has worked diligently over the past 2 years to end needless duplication in permits that must be obtained by the Alaska logging industry. I am confident that the amendment we offer today will force the agencies to do what they should have done years ago. When the agreement is completed, Alaskans affected by section 404 and 402 requirements will be able to get on with the conduct of business, and will no longer have to waste their efforts working paper through two agencies.

Mr. President, I ask for the adoption of the amendment.

Mr. CHAFEE. Speaking for this side, Mr. President, we are prepared to accept the amendment.

The PRESIDING OFFICER (Mr. Dole). The Senator from Maine.

Mr. MITCHELL. Mr. President, Senators Stevens and Murkowski have highlighted for the Senate problems posed by the current approach to regulation of log transfer facilities under the Clean Water Act.

I agree with my colleagues from Alaska that this problem needs attention and I support their proposed amendment.

The proposed amendment would direct the EPA and the Corps of Engineers to develop a process to issue joint permits under sections 402 and 404 of the Clean Water Act. The amendment leaves in place the important concept that logs are a water pollutant and therefore the discharge of logs to water requires a permit under section 402.

Some have questioned the descriptions of logs as a pollutant. Let me point out that my home State of Maine banned log drives on rivers years ago because of damage to rivers. Log bark leaches a variety of tannin and organic chemicals. Logs also damage marine environment.

The State of Alaska itself has called log transfer facilities "one of the most serious longstanding and widespread water quality problems in coastal Alaska."

Log transfer facilities also involved dredge and fill activities and require a permit under section 404 of the Clean Water Act.

These two legitimate permitting activities were not well coordinated. This lack of coordination has placed an unnecessary administrative burden on Alaskan loggers.

The proposed amendment goes directly to the problem of poor coordination and unnecessary regulatory burdens. It specifically directs the EPA and the corps to develop a joint permitting process by a specific date.

I am confident that this amendment will result in a more efficient and effective permitting process for log transfer facilities and I am pleased to support Senator Stevens and Senator Murkowski in this amendment.

Mr. STEVENS. Mr. President, I am delighted to have that comment from my good friend, the democratic manager of the bill.

The conditions in our State are slightly different—we, for instance, do not log in freshwater. Unlike the Senator from Maine [Mr. Mitchell] I view this issue as an overregulation problem rather than a pollution problem. Senator Mitchell has attributed a statement to the State of Alaska as representative of the State's view on this issue. The statement is flat wrong. I ask unanimous consent that a letter from the commissioner of the department of environmental conservation be printed. This letter properly puts forth the State of Alaska's sentiments on the issue.

There being no objection, the letter was ordered to be printed in the Record, as follows:

State of Alaska,
Juneau, June 11, 1985.

Hon. Ted Stevens,
U.S. Senate,
Washington, DC.

Dear Senator Stevens: On May 30, 1985, a letter from representatives of several environmental groups was sent to Senator John Chafee opposing the proposed amendment to the Clean Water Act (CWA) that would exempt log transfer facilities (LTFs) from the requirements of Section 402 of the Act.

The State of Alaska's position on the amendment in question is spelled out in my letter of March 15, 1985, to Robert Loescher. However, I would like to take this opportuntiy to clarify several issues raised in the more recent letter to Senator Chafee.

The letter contains a statement that characterizes LTF pollution as "one of the State's most serious water quality problems." While the problems associated with LTF's are serious enough to warrant our attention, there are several other water quality issues that are considerably more severe than those surrounding the siting and operation of LTFs.

The letter then indicates that the discharge of pollutants from LTFs has been unregulated in Alaska. I believe this is the most important issue at hand. The siting, operation, and maintenance of LTFs in Alaska are subject to review by both state and federal agencies under Section 404 of the CWA. The State has considerable opportunity through certifications issued under Section 401 of the CWA, and through consistency determinations authorized by the Coastal Zone Management Act, to address any potential water quality problems. Under these processes, state and federal agencies can and do attach stipulations to the 404 permit that are intended to prevent or minimize water pollution.

Finally, the letter indicates that retention of the NPDES permit requirement under Section 402 is essential to protection of water quality in Alaska. The State has worked for several years and continues to work to eliminate pollution from LTFs without having in place a 402 permit system. Indeed, only one LTF in Alaska has received an NPDES permit to date, and that permit resulted from a judicial interpretation concerning the original mode of transport for logs by helicopter, not over the environmental necessity for the permit. We believe we have addressed any problems associated with LTFs absent a Section 402 permit, and will continue to do so.

I hope that this information is helpful. Please do not hesitate to contact me if you require additional information.

Sincerely,

Bill Ross, *Commissioner.*

Mr. STEVENS. Mr. President, in the future, I believe that we ought to do more here in the Senate of pursuing what I call the one-stop process so that these small business people need only deal with one Federal entity in order to obtain the clearances they need to comply with Federal law.

This is a step in that direction. I am delighted to be a part of it and have the support of the Members who have cosponsored this amendment. I ask for the adoption of the amendment.

Mr. MURKOWSKI. Mr. President, as the Senate considers the amendment my colleague, Mr. Stevens, and I have offered, I ask that the distinguished Senator from Rhode Island discuss some features of this proposal with Senator Stevens and myself.

Would the Senator from Rhode Island agree that the purpose of this amendment is to compel the EPA and Corps of Engineers to enter into an agreement whereby one of those agencies will process a permit that meets the requirements of sections 404 and 402 as required for log transfer facilities?

Mr. CHAFEE. The Senator is correct. I might add, Mr. President, that this matter has been discussed at some length among the members of the Environment and Public Works Committee. The committee has corresponded with the Administrator of EPA, and we are informed that the Agency has the authority to enter into the agreement as set forth in the amendment.

Mr. MURKOWSKI. Senator Chafee, this amendment sets a firm deadline on the agencies to enter into an agreement on or before October 12, 1985. Are we in complete agreement that the agencies must begin to negotiate the agreement immediately, and that they must complete the agreement before October 12, 1985?

Mr. CHAFEE. Again, the Senator is correct. I expect the Corps and the EPA to commence discussions tomorrow to develop the agreement.

Mr. STEVENS. Mr. President, I am greatly concerned that there be no enforcement or issuance of section 402 permits for existing log transfer facilities by the EPA until October 12, when we expect an agreement will be reached. The amendment addresses this concern. However, I ask what the Environment and Public Works Committee would intend to do in the event that the agencies ignore the mandate of the amendment and fail to reach an agreement on or before October 12?

Mr. STAFFORD. Mr. President, if the Senator from Alaska will yield on that point, as chairman of the Environment and Public Works Committee, I pledge my full support to the Senators from Alaska on this amendment. The EPA and the Corps of Engineers must abide by the intent of the Senate in completing an agreement by October 12. The staff of the committee will continually monitor progress on this matter, and will be vigilant in ensuring that the agencies meet the deadline.

Mr. STEVENS. Mr. President, I thank Senator Stafford.

There must be an assurance that the agencies will meet the deadline. They have not been able to work together on this matter for 2 years, and the logging industry in Alaska simply cannot continue to spend time and effort in working on needlessly duplicative permits while the agencies procrastinate.

Mr. CHAFEE. Mr. President, the amendment now calls for a stay of enforcement of the section 402 requirements between now and October 12. The agencies must meet that deadline. If they do not, then I would support a measure to extend the stay of enforcement for a further limited period of time and perhaps other steps to force the agencies to reach the agreement.

Mr. STAFFORD. Mr. President, I, too, would support such an extension of the enforcement stay if the agencies fail to abide by the amendment.

Mr. DOLE. Mr. President, I understand that this matter of 402 and 404 permits is of deep concern to my colleagues from Alaska. The majority leader has been involved in working with the Senators from Alaska, and the Environment and Public Works Committee to fashion this agreement.

Let me say, Mr. President, that a

great deal of time and effort has been spent by Senators to arrive at this agreement. We simply cannot tolerate the EPA or the Corps of Engineers ignoring the clear intent of this body to enter an agreement by October 12. I would join with my colleagues in extending the enforcement stay, if that is necessary.

But let me add, Mr. President, that the agencies must be placed on notice that to ignore our clear direction on this matter could result in other sanctions. For example, by October the Senate will likely be considering funding measures affecting the corps and the EPA. If they ignore this amendment, then the Senator from Kansas will seriously entertain measures to terminate specific funding for either or both agencies.

Mr. STEVENS. Mr. President, I want these agencies to know that, as a member of the Appropriations Committee, I will not hesitate to seek cuts in funding for both agencies if it even looks like they intend to ignore the mandate of this body.

Mr. MURKOWSKI. Mr. President, I appreciate the cooperation of the Senator from Rhode Island, Senator CHAFEE, and that of Senator STAFFORD, the chairman of the Environment and Public Works Committee. In addition, the majority leader has been instrumental in helping the parties reach an agreement on this matter, and I am grateful for this assistance.

Finally, Mr. President, my friend, the senior Senator from Alaska, TED STEVENS, must be commended for the time and effort he has given in resolving this matter. He has worked diligently over the past 2 years to end needless duplication in permits that must be obtained by the Alaska logging industry. I am confident that the amendment we offer today will force the agencies to do what they should have done years ago. When the agreement is completed, Alaskans affected by section 404 and 402 requirements will be able to get on with the conduct of business, and will no longer have to waste their efforts working paper through two agencies.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 334) was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CHAFEE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 335

(Purpose: To provide for a Great Lakes Research Office)

Mr. KASTEN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Wisconsin [Mr. KASTEN] proposes an amendment numbered 335.

Mr. KASTEN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 71, after the end of line 13 strike out the period and insert "; and".

On page 71, between the lines 13 and 14, insert the following:

(5) 'Research Office' means the Great Lakes Research Office established by subsection (d).

On page 74, between lines 2 and 3, insert the following:

"(d) GREAT LAKES RESEARCH.—

"(1) There is established within the National Oceanic and Atmospheric Administration the Great Lakes Research Office.

"(2) The Research Office shall identify issues relating to the Great Lakes resources on which research is needed. The Research Office shall submit a report on such issues prior to the end of each fiscal year which shall identify any changes in the Great Lakes system with respect to such issues.

"(3) The Research Office shall identify and inventory Federal, State, university, and tribal environmental research programs, and to the extent feasible, those of private organizations and other nations, relating to the Great Lakes system, and shall update that inventory every four years.

"(4) The Research Office shall establish a Great Lakes research exchange for the purpose of facilitating the rapid identification, acquisition, retrieval, dissemination, and use of information concerning research projects which are on-going or completed and which affect the Great Lakes System.

"(5) The Research Office shall develop, in cooperation with the Program Office, a comprehensive environmental research program and data base for the Great Lakes System. The data base shall include, but not be limited to, data relating to water quality, fisheries, and biota.

"(6) The Research Office shall conduct, through the Great Lakes Environmental Research Laboratory, the National Sea Grant College Program, and other Federal laboratories, and the private sector, appropriate research and monitoring activities which address priority issues and current needs relating to the Great Lakes.

"(7) The Great Lakes Research Office shall be located in a Great Lakes State.

"(e) RESEARCH AND MANAGEMENT COORDINATION.—

"(1) Prior to October 1 of each year, the Program Office and the Research Office shall prepare a joint research plan for the fiscal year which begins the following calendar year.

"(2) Each plan prepared under paragraph (1) shall—

"(A) identify all proposed research dedicated to activities conducted under the Great Lakes Water Quality Agreement of 1978;

"(B) include the Agency's assessment of priorities for research needed to fulfill the terms of such agreement; and

"(C) identify all proposed research that may be used to develop a comprehensive environmental data base for the Great Lakes System and establish priorities for development of such data base.

On page 74, line 3, strike out "(d)" and insert "(f)".

On page 74, line 17, strike out "(e)" and insert "(g)".

On page 70, line 21, insert "(a)" immediately before "Title".

On page 75, strike lines 1 through 11, and insert in lieu thereof the following:

" '(h) AUTHORIZATIONS OF GREAT LAKES APPROPRIATIONS.—There are authorized to be appropriated to carry out this section not to exceed $10,000,000 per fiscal year for the fiscal years 1986, 1987, 1988, 1989 and 1990. Of such amounts as are appropriated each fiscal year—

" '(1) fifty percentum shall be used for the Great Lakes National Program Office demonstration projects on the feasibility of controlling and removing toxic pollutants;

" '(2) seven percentum shall be used for the Great Lakes National Program Office's program of nutrient monitoring; and

" '(3) thirty percentum shall be used for the Great Lakes Research Office.'

"(b) Section 517 of the Clean Water Act is amended by inserting '118,' immediately after '115'.".

Mr. KASTEN. Mr. President, today I am offering an amendment to provide for the coordination of research efforts conducted on the Great Lakes.

This amendment is based on S. 765, the Great Lakes Management Act which I introduced earlier this year. Twelve other Senators have joined me by cosponsoring that legislation.

The Great Lakes are one of the world's most spectacular resources. They contain 95 percent of this Nation's surface freshwater.

The Great Lakes stretch for over 1,000 miles, and have a surface area of 94,510 square miles. That is an area the size of the States of Maine, West Virginia, Maryland, Massachusetts, Delaware, Vermont, and New Jersey put together.

They contain 6 quadrillion gallons of water. That is one-fifth of all the freshwater in the world.

In short, the Great Lakes are the world's most important source of a very valuable, and increasingly scarce resource—clean water.

Unfortunately, the Federal efforts to manage the world's most valuable supply of freshwater is in disarray.

Federal efforts to manage the Great Lakes are frightingly inadequate. No single agency is currently charged with the responsibility of overseeing the resource on a basinwide basis.

The legislation I have introduced will correct this textbook example of how not to manage a resource. The Committee on Environment and Public Works has already acted on the EPA provisions of this legislation.

Today, I am offering, that portion of S. 765 that was outside of the committee's jurisdiction—to give NOAA additional responsibilities to protect the resources of the Great Lakes.

Specifically, the amendment I am offering establishes, within the National Oceanic and Atmospheric Administration, the Great Lakes Research Office.

The Research Office shall be the lead agency in conducting basic scientific research on the Great Lakes. In addition it will be responsible for overseeing all other Great Lakes research.

In short, this office shall be responsible for assuring the coordination of all research efforts on the Great Lakes. Such research efforts are currently conducted by each of the eight Great Lakes States, universities, NOAA, EPA, the Fish and Wildlife Service, USDA, the Corps of Engineers, and others.

Finally, this amendment provides for the coordination of research and management efforts. This amendment gives priority to the research needs of those agencies that are responsible for managing the resources of the Great Lakes.

By taking these steps, I believe that we will make a major achievement in protecting the world's most important fresh water resource. This action will not only benefit the 27 million Americans who currently depend on the Great Lakes for their drinking water, but also the millions more who depend on them as essential components of industry and their way of life.

This program which we are adopting today will assure that those resources are available to our children and their children so that they too may enjoy and benefit from the bounties of our Nation's inland sweetwater seas.

Mr. President, we have discussed this amendment with the manager of the bill. I am optimistic that it can be adopted.

Mr. CHAFEE. Mr. President, this is a good amendment, we believe, on this side. It provides an important role for the National Oceanic and Atmospheric Administration in coordinating research with the EPA in the Great Lakes. We are prepared to accept the amendment.

Mr. MITCHELL. Mr. President, I associate myself with the remarks of the distinguished manager of the bill and support the amendment.

Mr. KASTEN. Mr. President, I move the adoption of the amendment.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 335) was agreed to.

Mr. KASTEN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CHAFEE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 336

Mr. MITCHELL. Mr. President, on behalf of Mr. RIEGLE, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. SIMPSON). The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL] on behalf of Mr. RIEGLE proposes an amendment numbered 336.

Mr. MITCHELL. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 72, line 1, strike "appropriation" and insert in lieu thereof "appropriate".

On page 72, line 2, after "agencies," insert "and in accordance with section 101(e) of this Act,".

On page 73, line 8, strike "such agreement" and insert in lieu thereof "the Great Lakes Water Quality Agreement of 1978".

On page 73, line 14, after "Great Lakes" insert "system, including the monitoring of groundwater, air transport and acid deposition, and sediment".

Mr. MITCHELL. Mr. President, these are a series of technical amendments offered by Senator RIEGLE to the Great Lakes provision of the bill. we have reviewed them and find them to be in order and support the amendment.

Mr. CHAFEE. Mr. President, speaking for this side, we also find the amendment acceptable and urge its adoption.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 336) was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CHAFEE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

(Later the following occurred:)

Mr. MITCHELL. Mr. President, I ask unanimous consent that amendment No. 336 be modified to reflect a change now at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

The modified amendment follows:

On page 72, line 1, strike "appropriation" and insert in lieu thereof "appropriate".

On page 72, line 2, after "agencies," insert in accordance with section 101(e) of this Act,".

On page 73, line 8, strike "such agreement" and insert in lieu thereof "the Great Lakes Water Quality Agreement of 1978".

On page 73, line 14, after "Great Lakes" insert "system, including the monitoring of groundwater and sediment".

AMENDMENT NO. 337

(Purpose: To further refine the National Estuary Program contained in the Clean Water Act Amendments of 1985)

Mr. CHAFEE. Mr. President, on behalf of Senator WEICKER, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The Clerk will report.

The assistant legislative clerk read as follows:

The Senator from Rhode Island [Mr. CHAFEE], on behalf of Mr. WEICKER, proposes an amendment numbered 337.

Mr. CHAFEE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 50, strike all after line 9 through line 21 and insert the following:

"The Administrator shall provide up to $5,000,000 per fiscal year of the sums authorized to be appropriated under this subsection to the Administrator of the National Oceanic and Atmospheric Administration to carry out tasks assigned under subsection (g).

"(f) Any State, interstate, or regional agency that receives a grant under subsection (e) shall report to the Administrator not later than eighteen months after receipt of such grant and biennially thereafter on the progress being made under this section:

"(g)(1) In order to determine the need to convene a management conference under this section or at the request of such a management conference, the Administrator shall coordinate and implement, through the National Marine Pollution Program Office and the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, as appropriate, for one or more estuarine zones—

"(A) a long-term program of trend assessment monitoring measuring variations in pollutant concentrations, marine ecology, and other physical or biological environmental parameter which may affect estuarine zones, to provide the Administrator the capacity to determine the potential and actual effects of alternative management strategies and measures;

"(B) a program of ecosystem assessment assisting in the development of (i) baseline studies which determine the state of estuarine zones and the effects of natural and anthropogenic changes, and (ii) predictive models capable of translating information on specific discharges or general pollutant loadings within estuarine zones into a set of probable effects on such zones;

"(C) a comprehensive water quality sampling program for the continuous monitoring of nutrients, chlorine, acid precipitation, dissolved oxygen, and potentially toxic pollutants (including organic chemicals and metals) in estuarine zones, after consultation with interested State, local, interstate, or international agencies and review and analysis of all environmental sampling data presently collected from estuarine zones; and

"(D) a program of research to identify the movements of nutrients, sediments and pollutants through estuarine zones and the impact of nutrients, sediments and pollutants on water quality, the ecosystem, and designated or potential uses of the estuarine zone.

"(2) The Administrator, in cooperation with the Administrator of the National Oceanic and Atmospheric Administration, shall submit to the Congress no less often than biennially a comprehensive report on the activities authorized under this subsection including—

"(A) a listing of priority monitoring and research needs;

"(B) an assessment of the state and health of the Nation's estuarine zones, to the extent evaluated under this subsection;

"(C) a discussion of pollution problems and trends in pollutant concentrations with a direct or indirect effect on water quality, the ecosystem, and designated or potential uses of each estuarine zone, to the extent evaluated under this subsection and (D) an evaluation of pollution abatement activities and management measures so far implemented to determine the degree of improvement toward the objectives expressed in subsection (a)(1)(D) of this section.

"(h) For the purposes of this section, the terms 'estuary' and 'estuarine zone' shall have the same meanings such terms have in section 104(n)(4) of this Act, except that the term 'estuarine zone' shall include those portions of tributaries draining into the estuary up to the historic height of migration of anadromous fish or the historic head of tidal influence, whichever is higher."

Mr. WEICKER. Mr. President, I would like to commend the Senator from Rhode Island for his recognition of the serious pollution problems in our Nation's estuaries and for taking action to correct these problems in section 320 of this bill. I also would like to commend him for giving the EPA Administrator the option of using the substantial capabilities of the National Oceanic and Atmospheric Administration [NOAA] to do water quality monitoring and ecosystem assessment research in the estuaries under part (g)(1) of this section.

Mr. President, section 320 represents a synthesis of ideas on how to best correct pollution problems which currently plague our estuarine resources. This provision also draws from the substantial experience gained through the study of pollution problems in the Chesapeake Bay. In addition, this bill provides for the continued involvement of the EPA Office of Marine and Estuarine Protection in studies initiated in Long Island Sound, Narragansett Bay, Buzzards Bay, and Puget Sound earlier this year, made possible by funds included in EPA's fiscal year 1985 appropriation. This measure provides for a scientific mechanism and an institutional structure which can make it possible to restore biological vitality of our Nation's sounds and bays.

It is important to note that section 320 makes available to EPA the substantial marine pollution monitoring and assessment capability created at Federal expense within NOAA's National Marine Fisheries Service. The coordination of EPA's research, abatement and management effort with NOAA's expertise in water quality monitoring and ecosystems assessment is essential if the enormous task of restoring the health of the Nation's estuaries is to be accomplished in a timely, consistent and efficient manner. NOAA's role, however, should directly support and be compatible with EPA's requirements for ensuring that adequate water quality standards are maintained within the designated estuaries. It is appropriate for such cooperation to take place and the groundwork for this cooperation is found in section 104(a) of the Clean Water Act.

Under section (g)(2) of the National Estuary Program the Congress can expect a report prepared jointly by EPA and NOAA which will present the findings of the activities taken under this section. This report will provide a listing of priority monitoring and research needs; an assessment of the state and health of the Nation's estuarine zones to the extent evaluated; a discussion of pollution problems and trends in pollutant concentrations that have a direct or indirect effect on water quality, the ecosystem, and designated or potential uses of each estuarine zone; and an evaluation of pollution abatement activities and management measures implemented to determine the degree of improvement made toward restoring and maintaining the chemical, physical, and biological integrity of the estuaries studied.

Mr. President, this measure brings us much closer to finding and implementing scientifically based solutions to the pollution problems which are currently degrading our Nation's estuaries and adversely effecting the shellfish, fish, and wildlife and recreation resources which these ecosystems sustain.

Mr. GORTON. Mr. President, section 320 of S. 1128, the Clean Water Act Amendments of 1985, would authorize the Administrator to convene management conferences to solve pollution problems in interstate and international estuaries. Section 320, the National Estuary Program, will be of great benefit to the State of Washington in its ongoing efforts to develop and implement a conservation and management plan for Puget Sound. Booth Gardner, the Governor of Washington State, recently signed into law legislation creating the Puget Sound Water Quality Authority, a government entity charged with the responsibility for developing a comprehensive water quality plan for Puget Sound by January 1, 1987.

The Authority is required to prepare a comprehensive Puget Sound water quality management plan which will prescribe the needed actions for the maintenance and enhancement of Puget Sound water quality. The plan will address all the water of Puget Sound, the Strait of Juan de Fuca, over which the United States and Canada have joint jurisdiction, and, to the extent that they affect water quality in Puget Sound, all waters flowing into Puget Sound, and adjacent lands. The plan will include: a statement of goals and objectives for long- and short-term management of the water quality of Puget Sound; a resource assessment which identifies critically sensitive areas, key characteristics, and other factors which lead to an understanding of Puget Sound as an ecosystem; demographic information and assessment as relates to future water quality impacts on Puget Sound; identification of research needs and priorities; and recommendations for guidelines, standards, and timetables for protection and clean-up activities and the establishment of priorities for major clean-up investments and nonpoint source management, and the projected costs of such priorities.

Because the Puget Sound Water Quality Authority shares the same objective as the management conferences which would be established under S. 1128 and is nearly identical in its responsibilities and activities to these conferences, can we view S. 1128 as allowing the Administrator the authority to designate the Puget Sound Water Quality Authority as the management conference for the purposes of this act?

Mr. CHAFEE. Yes; the Administrator of the Environmental Protection Agency is authorized to designate a State entity, such as the Puget Sound Water Quality Authority, as the management conference for the purposes of section 320 of the Clean Water Act Amendments of 1985.

Mr. GORTON. If the Administrator did not designate the Puget Sound Water Quality Authority as the management conference for the purposes of section 320, can we assume that it is the Congress' intent that S. 1128 in no way interfere with or preempt this State initiative, and that the Administrator make every effort to integrate the initiative underway in Washington State into the National Estuary Program?

Mr. CHAFEE. Yes; section 320 of the Clean Water Act Amendments of 1985 is not meant to interfere with or preempt activities of the Puget Sound Water Quality Authority, insofar as these activities comply with the requirements of Federal law. Indeed, the Puget Sound Water Quality Authority is a fine example of State initiative and the Administrator should make every effort to accomodate and support the Authority's activities.

Mr. GORTON. One final issue-within the last year the Environmental Protection Agency denied the waiver requests of over 25 utilities on Puget Sound which had previously been granted tentative waivers under section 301(h) of the Federal Clean Water Act. These public utilities have received orders from the Agency to proceed with implementing secondary treatment, and a majority of them will be placed on compliance schedules which extend beyond the 1988 compliance deadline. These compliance schedules reflect the Environmental Protection Agency's prosecutorial discretion.

Can we view section 320 of S. 1128 as in no way affecting legal compliance schedules agreed upon by the Agency and the utilities?

Mr. CHAFEE. Yes; it is the express intent of the committee that nothing in section 320 affect compliance schedules or other requirements established by law or by the Agency for municipal, industrial or other dischargers.

Mr. EVANS. Mr. President, I rise to commend to my colleague from Rhode Island for his perserverance in establishing a National Estuary Program. He has pursued this objective for some time and I commend him for a job well done. The program established in section 320 of the Clean Water Act Amendments of 1985 is critical if we are to protect our Nation's estuaries. This program will certainly enhance Washington State's efforts to protect Puget Sound and I can assure my good friend we will support the National Estuary Program to the fullest extent possible.

In February of this year, I held a 1-day conference on the nature and scope of the problems facing Puget Sound. I heard presentations from the scientifc community, from those responsible for activities affecting Puget Sound and from legislators responsible for laws governing such activities and the necessary funding. After hearing the various perspectives, I chaired a roundtable discussion during which we tried to reach a more common understanding of the needs of Puget Sound and some of the means to address these needs.

The roundtable discussion participants agreed that the Puget Sound Water Quality Authority was the appropriate entity to be responsible for developing a comprehensive water quality plan for Puget Sound. I note the exchange between Senator CHAFEE and my fellow Washingtonian, Senator GORTON, expressing the view of Congress that the Puget Sound Water Quality Authority can be designated as the management conference for the purposes of section 320 of this act. This removes any questions that might be raised on this matter and I thank my colleague for his willingness to clarify this for the RECORD.

Mr. CHAFEE. Mr. President, this

amendment allows EPA to transfer up to—not $5 million, but up to—$5 million of the $12 million authorized under the National Estuary Program which is established in this bill.

Under the amendment, the transfer of up to $5 million would be by EPA to NOAH, the National Oceanic and Atmospheric Administration. Under the amendment, EPA shall utilize the National Oceanic and Atmospheric Administration to carry out research in the estuary should EPA so agree.

Mr. President, I think it is a good amendment and would urge its passage.

Mr. MITCHELL. Mr. President, I have no objection to the amendment.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 337) was agreed to.

Mr. CHAFEE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GORTON. Mr. President, I would like to take this opportunity to express my support for S. 1128, the Clean Water Act Amendments of 1985. I commend my distinguished colleague from Rhode Island, Mr. CHAFEE, for working so diligently to develop the legislation and steer it through committee consideration so early in this Congress.

The Clean Water Act has been one of the most successful of our environmental laws. In my view, the committee did a fine job of correcting those problems which do exist and reporting a strong reauthorization of the act. I am particularly pleased that this bill adds a new section 320, the National Estuary Program, which authorizes the Administrator to convene management conferences to solve pollution problems in certain critically important estuaries. The National Estuary Program will provide Washington State with a unique opportunity to preserve an estuary of both regional and national importance, Puget Sound.

During the 98th Congress, at the request of myself and Senator EVANS, Puget Sound was added to a list of estuaries eligible to receive $4 million in fiscal year 1985 for estuarine pollution monitoring and assessment. The State of Washington, the region 10 office of EPA, and local citizens joined forces to create a joint Federal/State program and these funds were used by the program to identify and address the growing number of water quality problems in Puget Sound. The National Estuary Program will allow the work of the program to continue and will be of great benefit to the State of Washington in its ongoing efforts to develop and implement a conservation and management plan for Puget Sound.

I thank Senator CHAFEE and his staff for their excellent work in developing this vital program. In particular, I would like to thank professional staff member Bob Hurley for the attention and assistance he gave not only to my staff, but to a number of interested parties from the State of Washington as the National Estuary Program was being developed.

Mr. PROXMIRE. Mr. President, I thank the chairman for giving me the opportunity to speak to this amendment and to engage in a brief colloquy with him as to its meaning and applicability.

As he knows, the case of Illinois versus City of Milwaukee, in all of its forms, has been before various Federal and State courts for almost 15 years. It has twice been adjudicated by the U.S. Supreme Court and is the subject of numerous lower Federal court opinions.

In *City of Milwaukee* v. *Illinois*, 451 U.S. 304 (1981), known as Milwaukee II, the Supreme Court declared that Congress had so occupied the field in enacting the Clean Water Act amendments that Federal common law of nuisance jurisdiction over interstate water pollution disputes had effectively been displaced.

If the Court had ruled otherwise, the city of Milwaukee might have been subjected to a judge-made water pollution cleanup schedule many times stricter than those imposed on all other cities by the EPA acting under the terms of the Clean Water Act.

The additional requirements of the common law based schedule would have cost Milwaukee $1 billion over and above the $1.7 billion needed to meet Clean Water Act requirements and none of the extra funds would have been reimbursed by EPA under the sewer grants program.

Milwaukee is currently meeting the terms of its Clean Water Act cleanup schedule and making every effort under the act to minimize pollution of Lake Michigan.

Is it the Senator's intention to exempt the Illinois versus City of Milwaukee dispute in all of its forms from the scope of section 118(a) Clean Water Act actions for interstate water pollution brought under State statutory or common law authority in the Federal courts?

Mr. CHAFEE. Yes, that is correct, this dispute will be exempt from the reach of section 118(a) of the Clean Water Act, as amended.

Mr. PROXMIRE. Then even though there may be additional opinions issued as part of the ongoing litigation between Illinois and Milwaukee concerning pollution of Lake Michigan, section 118(a) will not apply to the dispute?

Mr. CHAFEE. Yes, that is correct.

Mr. PROXMIRE. I thank the distinguished Senator for his consideration of Milwaukee's situation and for his assistance in resolving this problem.

Mr. WILSON. Mr. President, I rise in support of S. 1128, the "Clean Water Act Amendments of 1985." This bill represents several years of hard work by the distinguished Senator from Rhode Island and our colleagues on the Committee on Environment and Public Works. These continued efforts have resulted in a very good bill.

Mr. President, I would like to take this opportunity to discuss several points with the Senator from Rhode Island, chairman of the Environment and Public Works Subcommittee on Environmental Pollution, which I believe will lead to a successful conference with the House. It is on this point that I would like to explore with Senator CHAFEE his willingness to work in conference on some issues of particular concern to the State of California.

To begin with, a matter of great concern to my State, particularly southern California, which has come to a head in the time since the Subcommittee on Environmental Pollution, under the able leadership of my friend, the distinguished Senator from Rhode Island, reported S. 1128, the "Clean Water Act Amendments of 1985."

Mr. President, the concern to which I refer, is two major sources of uncontrolled and untreated industrial and domestic sewage which flow from Mexico into my State in both the Tijuana/San Diego area and the New River/Calexico area. While both of these situations are critical, today I would like to focus on the Tijuana sewage hazard.

The chairman is no doubt aware of this intolerable sewage situation.

Mr. CHAFEE. The Senator from California is correct, I am well aware of the Mexican sewage flowing untreated into California.

Mr. WILSON. Mr. President, I would like to briefly highlight the Tijuana problem, the inherent health hazard, and the actions recently taken.

Under the terms of a 20-year-old international agreement, the city of San Diego treats between 13 and 15 million gallons of Tijuana sewage daily. As a result, city sewer customers have been burdened with a $1.8 million a year tab for treating Tijuana's sewage.

The remainder of the estimated 20 million gallons per day [MDG] of sewage produced by Tijuana flows untreated into the ocean south of that city or north into the Tijuana River and its tributaries on the U.S. side of the border. Sewage from both the river and the ocean pollutes San Diego's South Bay beaches and has frequently forced county health officials to quarantine them.

The fact that the origin of the pollution is in Mexico has complicated the difficult task of finding a solution. The net result of all this is an uncontrolled source of pollution which is a daily hazard to the health and environment of San Diego County.

I cannot stress enough the public health implications of this situation. This situation is intolerable and we must not allow it to continue. The State Department, the Environmental Protection Agency, the State of California and the city of San Diego all have struggled with this problem; and despite all of that, the problem continues and, indeed, grows worse.

My friend from Rhode Island, Mr. CHAFEE, will recall that the serious nature of this situation caused me to seek his support last year for the authorization of a binational sewage treatment plant to be located on the U.S. side of the border. Since the close of the 98th Congress, the Mexican Government has renewed its commitment to the resolution of this problem and taken several significant steps to stem the flows of untreated sewage in to the San Diego area.

During a series of two meetings, the first in Tijuana and the second in Mexico City, representatives of the State Department and the Environmental Protection Agency, along with observers representing Congress, the California Legislature, and the city and county of San Diego met with their Mexican counterparts to discuss a new Mexican proposal to resolve the sewage problem at the Tijuana/San Diego border. The Mexican Government has committed to buid a treatment plant, in Mexico, as part of their effort to expand Tijuana sewage and water systems.

To make this plan a reality, Mexico recently sought a $46.4 million loan from the Inter-American Development Bank [IDB]. The IDB approved the loan in early March and Mexico broke ground for the new treatment plant in mid-May. The plant is expected to be operational in 12 to 15 months.

In the spirit of cooperation, Mexico agreed to several stipulations to the loan that the United States had requested to assure the ultimate completion of the plant. Additionally, an International Boundary and Water Commission [IBWC] minute which gives the United States further assurances and construction observation rights is ready to be signed. A third agreement—an annex to the 1983 Presidents Reagan and de la Madrid accords—is expected to be signed this summer and will elevate the IDB project to a formal commitment between the Governments of the United States and Mexico.

Mr. President, it is my belief that the effluent from Mexico which is polluting this portion of my State must be combated because we have a responsibility to protect American citizens who are the victims of a problem not of their own making. American citizens have a right to expect that we will undertake a defensive action against a problem caused by another country's inaction.

To that end, Mr. President, while I believe the last 6 months to be, perhaps, the most significant in the 40-year history of this border sewage problem with the Mexican Government finally producing its own solution to the Tijuana/San Diego problem, I must ask the subcommittee chairman for his assistance with an authorization for a supplemental defensive system which offers these American citizens the full guarantees they deserve.

Mr. CHAFEE. I would like to inquire of the Senator from California as to what authorization actions the House has taken for a facility to treat Tijuana sewage?

Mr. WILSON. The House bill authorizes construction of a $32 million supplemental treatment works project to protect residents of San Diego and surrounding areas from pollution resulting from any inadequacies, or breakdowns in wastewater treatment works systems in Mexico. The supplemental system consists of catch basins and a major sewer line on the U.S. side of the border to intercept spills of raw Mexican sewage and transport it back to Mexico.

Additionally, the bill includes authorization for a treatment works in the city of San Diego to provide primary or more advanced treatment of municipal sewage and industrial waste from the city of Tijuana, Mexico. Should this treatment works have a capacity which is no longer necessary to provide such treatment, such capacity may be used to provide treatment for municipal sewage and industrial waste for the city of San Diego.

Further, the bill provides that construction of the treatment works to provide treatment of municipal sewage and industrial waste from the city of Tijuana shall be at full Federal expense less any costs paid by the Government of Mexico as a result of agreement negotiated with the United States.

Mr. President, it is important to recognize that the House committee does not believe that it will be necessary to construct a treatment works in the city of San Diego. Accompanying report language states "the Committee commends the efforts of the Mexican Government and is confident of the willingness and ability of Mexico to construct and maintain such facilities." The committee goes on to say "it is the belief of the committee that a treatment plant on the U.S. side of the border to treat Tijuana sewage will not be necessary; however, such facility shall be constructed if the Administrator [EPA], in consultation with the appropriate Federal, State and local entities, determines that the Mexican facilities do not sufficiently resolve the problem."

Mr. CHAFEE. I thank the Senator and wish him to know I understand the seriousness of the Tijuana sewage situation. Am I correct in my understanding that a treatment works in San Diego is not likely to be built?

Mr. WILSON. That is correct. Construction will occur only on the off chance that the Mexican facilities do not adequately solve this problem.

Mr. President, I will summarize then: The Tijuana language is not in the measure before us; however, it is incorporated into the version which is being considered by the other body. H.R. 8, includes language authorizing a supplemental defensive system which will compliment the Mexican facilities. Additionally, if the Mexican plant does not sufficiently address the problem, and only then, may a treatment works be constructed in San Diego.

I would ask the distinguished subcommittee chairman to carefully consider the Tijuana language when the conference committee begins its work.

Mr. CHAFEE. I can understand the Senator's keen interest in this issue and respect him for his efforts on behalf of a region of his State which is adversely affected by a problem not of its own making.

Although I cannot promise the Senator from California that his request will be included in the final bill, I do want to assure my friend that I will give this request every consideration during the committee conference.

Mr. WILSON. I want to express my thanks to my good friend, the Senator from Rhode Island, for being so helpful on this issue. I look forward to reaching a mutually satisfactory resolution to this situation.

Turning to other matters, I would like to direct the chairman's attention to changes the House is expected to make in section 301(h). If enacted, these changes would significantly improve section 301(h) without reducing protection of our marine waters. This modification specifically relates to section 301(h)(2). This change would respond to a need to tighten the coverage of this waiver provision while at the same time limiting the scope of the monitoring to those scientific investigations which are necessary to study the effects of the existing discharge. It would require monitoring programs to include methods which are widely proven and accepted with demonstrated value in assessing impacts that can be attributed to the permittee's discharge and that relate directly to qualifiable objectives promulgated in advance by the Administrator. Using widely proven cost-effective techniques will help assure that data collection is not hastily or poorly done and that comparable results can be achieved throughout the Nation. It would also assure that costly programs are not imposed on section 301(h) permittees without good reason.

Section 301(h) would also be clarified in the House bill to assure that the Administrator shall grant to the applicant removal credits to reflect the consistent removal of a pollutant achieved by the treatment works. This amendment in the House bill seeks to clarify existing law to be sure that section 301(h) agencies are treated like anyone else when applying for removal credits. The amendment further provides that there must exist an effluent limitation on the treatment works for the pollutant and the revised requirement must not result in the effluent violating such effluent limitations and that the revised requirement should not result in interference with the method of disposal or reuse of sludge from the treatment works. The revised requirement will not result in a pollutant interfering with the operation of the treatment works. Also, all other criteria of section 301(h) must be met.

These modifications to section 301(h) that the House is expected to make are ones that I support and would hope will be viewed favorably in conference.

Mr. CHAFEE. Knowing of my good friend's long association with this issue, I appreciate hearing his views and promise to give this matter careful consideration in conference.

Mr. WILSON. I thank the Senator. Proceeding further, I would ask that the Senate conferees support a study, expected to be authorized in the House bill, which would be conducted by EPA, in consultation with the city and county of Los Angeles, on the problem of corrosive effects of sulfides in collection and treatment systems. This is a phenomenon which appears to occur only in hot, dry climates and which, if answers are not found, could jeopardize millions of dollars in Federal, State, and local dollars invested in sewers. It does not seem to be caused by industrial discharge, but is a result of a combination of sulfur, naturally occurring in the water, with hydrogen. This problem is particularly troublesome because we are sunsetting the construction grants program and reducing the total authorization for this program at the same time. If there is a possibility of preventing the premature deterioration of these multimillion dollar projects, it is incumbent upon us to take the necessary steps. This study would offer an opportunity to examine the reasons behind the premature deterioration of our sewer systems and provide alternatives to correct the problem.

Mr. Chairman, I would appreciate it if the chairman would convey to me his intent with respect to this important proposed study.

Mr. CHAFEE. I thank the Senator. I will look seriously at this amendment in conference and try to accommodate the Senator from California [Mr. Wilson] concerns.

Mr. WILSON. I very much appreciate the Senators interest. On another front, the chairman is aware that I supported inclusion of authorizing language for an innovative waste treatment process facility in San Diego, CA in the Senate bill. Because of his reluctance to authorize individual projects in this legislation, you deferred judgment on whether to include it in the excellent bill that the Senate is debating at this point. The language authorizing the project is in the House version.

Briefly, this is an innovative waste treatment project known as CCBA which promises to solve two crucial environmental problems at the same time. It reclaims wastewater and it does so in a way that it produces a useable byproduct instead of unuseable and unwanted sludge. The project has been successfully run on a small scale, and it now is ready to be tested on a larger scale. If it tests favorably, it will then be suitable for widespread application throughout the wastewater treatment program.

I believe that for a relatively small investment of $3 million, we can learn a great deal about an innovative project that solves several environmental problems at the same time. Senator Cranston supports this project as does Senator DeConcini of Arizona. Both of my colleagues and I realize that there is simply not enough water in the Southwest to go around, and any innovative effort which can prove itself to successfully reclaim wastewater should be encouraged.

Therefore, I would urge the chairman to look upon the House-authorized provision for the San Diego project favorably, and to support the House's efforts to include this in the reauthorization of the Clean Water Act. Would the Senator at this time state his disposition with respect to this project?

Mr. CHAFEE. I appreciate having this project brought to my attention and I will look carefully at it when we consider it in the conference committee.

Mr. WILSON. Mr. President, during the chairman's deliberations on the excellent clean water bill that he has now brought to the floor, I and my staff brought to his attention a unique problem affecting a major utility on the east side fo the San Francisco Bay, the East Bay Municipal Utility District. I understand that he was unable to resolve this problem in his committee, but I would like to bring it to his attention again.

Briefly, as background, the East Bay MUD transports and treats wastewater from 600,000 residents in the Oakland and Berkeley, CA, area. It has a separate storm and sanitary sewer system. When it is not raining, 350 or more days a year, East Bay MUD meets or exceeds all of its applicable NPDES permit standards, something that is not true of many cities throughout the country. Yet, during heavy rainfall conditions, the volume in the system swells considerably and results in the overflow of sewage, highly diluted by the rainfall, into the bay. As a Senator from California, I am extremely concerned about any water quality impacts that might occur as a result of these overflows and I have been assured, and the local environmental community agrees, that these impacts do not cause an adverse effect on the important waters of the San Francisco Bay.

Ironically, were East Bay MUD a combined sewer system, like so many communities in the country, the Administrator would be able to provide a reasonable set of requirements so that when it rained, these overflows could occur legally. Because of a fairly obscure court case, however, EPA is forced to require that East Bay MUD meet full secondary treatment for its entire stormwater overflow.

Mr. President, this is a terrible expense. The severe rainfall causes a 1,000-percent increase in flow, from 80 million gallons to more than 800 million gallons. Meeting secondary treatment requirements for this 10-times-per-year occurrence would entail probably the largest secondary treatment plant in the country, consuming tremendous amounts of land and huge amounts of capital. It is not an appropriate response to the problem.

An appropriate response would require a rigorous program that East Bay MUD would implement to reduce the inflow of rainfall into the system. East Bay MUD is willing to do this and will have to do this with local dollars. Yet, under the current law, as interpreted by the court case, that will not be enough.

Mr. CHAFEE. I appreciate the fact that the Senator from California, Mr. Wilson, brought this unique situation to my attention during mark up and I understand his concerns. I will continue to work with my good friend to see if we can't adequately resolve the problem you have described.

Mr. WILSON. My thanks for the chairman's understanding and I look forward to working with him on this critical issue for the East Bay Municipal Utility District.

As a final matter, I am informed that the House will likely agree to a section in its as yet uncompleted version of Clean Water Act amendments which will direct the Administrator to make grants to the city of Avalon, CA, for improvements to its sewage treatment facility. While I can appreciate the intent of the committee to keep this bill before us today as simple as possible, I would ask the chairman to give this expected House language favorable consideration in the forthcoming House/Senate conference.

The city of Avalon, located on Santa Catalina Island, is in trouble because its sewage treatment plant was designed for an average daily flow of 500,000 gallons and a peak of 1 million gallons per day. However, with the many thousands of tourists that flock to this island paradise just off Los Angeles, the average daily flow has been 900,000 gallons per day, with peak flows up to 1.8 million gallons per day. Raw sewage has washed up on the beaches of Avalon several times in recent years.

In order to increase the capacity of this facility, and thus, avoid raw sewage from flowing into the ocean, the city of Avalon has assessed a tax which will raise an estimated $135,000 per year—a sizable contribution for a city of approximately 1,000 residents. However, this amount is not sufficient to fund the cost of the facilities improvements which are estimated to be approximately $2 to $3 million.

Avalon, is unique in that almost all of the land on the island is a natural conservatory—akin to a national park—and is funded by Federal tax laws. Thus, without improvements in the sewage treatment facility, the raw sewage flowing into the ocean is threatening this great national resource.

Mr. President, while I understand the chairman's reluctance to add line item authorizations to title II of the act by including any amendments, I urge him—in the House/Senate conference on this measure—to seriously consider this measure and accept the House-passed version, if he decides to accept amendments to title II of the act.

Mr. CHAFEE. I thank my good friend from California, Mr. Wilson, for bringing this matter to my attention, and you can be assured that I will give the House proposal dealing with the city of Avalon serious consideration.

Mr. WILSON. Mr. President, the chairman and the other members of the committee and his staff have done an excellent job in bringing this important bill to the floor. I appreciate the additional efforts he has extended on my behalf to help me meet the great needs of my State. Please accept my sincere thanks for the assistance provided me and my staff. I look forward to a successful House/Senate conference.

Mr. CRANSTON. I wish to associate myself with the remarks of my colleague from California (Mr. Wilson).

I do have one significant concern, however, about reports coming from California about the condition of Santa Monica Bay. Both the city and county of Los Angeles have applications pending for 301(h) waivers. If approved by EPA, both the city and county will be able to continue discharging effluent which has received less than full secondary treatment into the bay. I question narrowing the scope of monitoring required of 301(h) permittees at a time we are finding more pollution—including high levels of DDT and PCB's—in Santa Monica Bay.

But monitoring alone is not the answer. We need additional research. A 1981 report done by Tetra Tech under contract with the Environmental Protection Agency concluded that existing data is totally inadequate to determine what the changes in the ocean environment of Santa Monica Bay really mean. Tetra Tech found that further study is required to identify the relative contributions of municipal sewage effluent and other sources. The 1983-84 Biennial Report of the Southern California Coastal Water Research Project also recommends further research.

We need to ask: What level of monitoring is necessary to determine the impact of discharges on the ocean environment? What can be done to reverse the degradation that has already occured in Santa Monica Bay? How long would it take to study the problem and develop a cleanup program? What would it cost? Who should pay? What are the environmental tradeoffs?

I would like to ask the chairman of the Environmental Pollution Subcommittee if he would join with me in raising these important questions with both the Environmental Protection Agency and the NOAA and taking appropriate action.

Mr. CHAFEE. I would be happy to join the Senator from California in such an inquiry.

Mr. WARNER. Mr. President, I rise today in strong support of the provisions of the Clean Water Act Amendments of 1985 which will revitalize the Chesapeake Bay's living resources, and continue our national commitment to rehabilitating the world's largest natural estuary.

But, I also want to bring to the attention of my colleagues my severe reservations with the committees new allocation formula for the Sewer Grants Construction Program.

One of my first initiatives after I was elected a Member of this body, was to join with my colleague, Senator MATHIAS, to focus national attention on the critical pollution problems in the Chesapeake Bay.

Following several discussions with President Reagan, our colleagues in the Congress and other executive branch agencies, President Reagan recognized the Bay as a "special national resource" and unveiled a strong Federal commitment to restoring the Chesapeake Bay in his 1984 State of the Union Address to the Congress.

I am very satisfied that we have been successful in securing $10 million to strengthen the Environmental Protection Agency's continued involvement in the bay cleanup program.

An additional $3.8 million has been approved for other agenices including the Soil Conservation Service, the National Oceanic and Atmospheric Administration, the Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, the Fish and Wildlife Service, and the U.S. Army Corps of Engineers.

The importance of a revitalized bay, as these actions clearly indicate, reaches far beyond Virginia, Maryland and the other States which directly touch the bay.

The Chesapeake Bay has always been a vital resource of the United States.

The bay's popularity itself may be the single greatest cause of its decline.

Each year, the bay provides millions of pounds of seafood, supplies a huge natural habitat for wildlife, functions as a major hub for shipping and commerce, and offers a wide variety of recreational opportunities for both residents and visitors.

If the decline of the bay is not arrested, the economies of Virginia and Maryland will be severely impacted.

But, of overriding importance will be the irreplaceable loss of an ecologically unique estuary.

We have demonstrated the widespread bipartisan support for the bay cleanup efforts as a national priority—not just a local or region responsibility.

And, I speak to you today to urge that we not retreat from this commitment.

Toward this goal, I commend the chairman and members of the Environment and Public Works Committee in recommending the establishment of an Office of Chesapeake Programs to coordinate State and Federal projects in the continuing Chesapeake Bay program as a part of the Clean Water Act amendments.

In addition to coordinating and disseminating all research information concerning the bay's environment, the Office of Chesapeake Programs will conduct research on sediment deposition, and on the impacts of pollutant loadings on the bay's water quality.

Ongoing research has revealed that contaminants entering the bay are not readily flushed out into the ocean but, because of the unique circulation pattern of the bay, they accumulate within the estuary.

I appeal to you that saving the bay is as much a battle against time, as it is a battle against pollution.

Biological death of the bay is incomprehensible to all but those intimately involved with this fragile estuary.

But, if we do not continue our cleanup efforts with all available technologies, this will be the fate of the bay.

Because the bay is an ecosystem which ignores State boundaries, such a loss will be devastating to the entire Nation.

It has taken many years to bring this deserved national attention to the bay, and it is the result of much hard work by my colleagues in the Senate, and the Governors of Virginia, Maryland, and Pennsylvania.

Because we have finally begun to make progress in this effort, I have grave concerns with a provision in the Clean Water Act amendments which I believe threatens the accomplishments we have made to date.

I refer to the new allotment formula for parceling out Federal sewer grant construction funds to the States.

The new allocation formula devised by the committee reduces significantly the current level of funds received by Chesapeake Bay States for this program.

I believe that if the Senate approves this new formula it will be a major step backward in our efforts for the bay.

Sewage is the most detectable form of land-based pollution, and a reduction of this magnitude to bay States represents a serious threat to the ability of our States to meet the water quality requirements of this act.

I believe that a loss of funds to improve water quality will result in continued contamination of the Chesapeake Bay and negate all of the positive work we have put into this program for the past few years.

As I have earlier stated, saving the bay is as much a battle against time, as it is a battle against pollution.

If we do not continue to provide critical funds to improve water quality we will be retreating from our commitment to revitalizing the Chesapeake Bay.

I urge my colleagues to support Senator DURENBERGER's amendment to ensure that all States retain at least 90 percent of their existing sewer grant construction allotment.

Mr. CHAFEE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CHAFEE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 338

Mr. CHAFEE. Mr. President, at this point I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Rhode Island [Mr. CHAFEE] proposes an amendment numbered 338.

Mr. CHAFEE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page , line , insert the following: Technical and Conforming Amendments

On page 25, line 21, strike "402(b)(8)" and insert in lieu thereof "402 (a)(3) and (b)(8)".

On page 26, line 3, strike "then" and insert in lieu thereof "than".

On page 9, after line 15 add the following subsection "(d) Section 301(g)(1) is amended by inserting "(1) immediately after "subsection (b)(2)(A)".

On page 23, line 2, strike "shal" and insert in lieu thereof "shall".

Mr. CHAFEE. Mr. President, there are actually four technical amendments. I am offering four technical amendments. The first amendment corrects an oversight in the bill, and conforms the knowing violation standard of the bill with the negligent violation standard section of the bill with respect to violation of State-administered pretreatment programs.

The second amendment changes the misspelled word "then" to "than."

The third amendment restores language that inadvertently was dropped from the bill which reaffirms existing policy on 301(g) modifications for pretreatment programs.

The fourth amendment changes the misspelled word "shal," with one "l," to "shall," with two "l's."

Mr. President, I move adoption of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. MITCHELL. Mr. President, I have no objection to the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Rhode Island [Mr. CHAFEE].

The amendment (No. 338) was agreed to.

Mr. CHAFEE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT No. 339

Mr. CHAFEE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Rhode Island [Mr. CHAFEE] proposes an amendment numbered 339.

Mr. CHAFEE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Section 505(c) is amended by adding the following new paragraph:

"(3) Whenever any action is brought under this section in a court of the United States, the plaintiff shall provide a copy "of the complaint to the Attorney General of the United States and to the Administrator. No consent judgment shall be entered in an action brought under this section in which the United States is not a party prior to forty-five days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator."

Mr. CHAFEE. Mr. President, this deals with notification in connection with citizen suits. The amendment requires that notification of proposed consent decrees be provided to the Attorney General, and to the Administrator.

It requires that copies of complaints be provided to both the Administrator and the Attorney General. It was originally proposed in the administration's Clean Water Act amendments but was inadvertently omitted from the committee bill. The administration bill contained a clause which specifically disclaimed that the United States could be bound by judgments in cases to which it is not a party.

That provision merely restates current law and thus we have decided that it is not necessary to include it in this amendment. The amendment is not intended to change existing law that the United States is not bound, since that rule of law is necessary to protect the public against abusive, collusive, or inadequate settlements, and to maintain the ability of the Government to set its own enforcement priorities.

Mr. President, I move adoption of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. MITCHELL. Mr. President, I associate myself with the statement made by the manager of the bill. I have no objection to the amendment.

The PRESIDING OFFICE. The question is on agreeing to the amendment of the Senator from Rhode Island.

The amendment (No. 339) was agreed to.

Mr. CHAFEE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CHAFEE. Mr. President, I suggest the absence of a quorum.

Mr. SYMMS addressed the Chair.

The PRESIDING OFFICER. Will the Senator withhold the quorum call?

Mr. CHAFEE. Yes.

Mr. SYMMS. Mr. President, I want to make a few comments, if the distinguished managers will allow me. I do not want to interfere with what they are doing. I want to make a few comments about the legislation.

I am in general support of the legislation. I particularly wish to thank Senator CHAFEE and Senator MITCHELL, and the rest of the committee—Senator STAFFORD, our chairman—for their cooperation with respect to a couple of issues that I want to talk about briefly.

When I think of all of the environmental legislation that has passed the Congress over a period of many years, probably the single most important thing for us as a nation is to protect the quality of water in this country because once water becomes poisoned and ruined, it certainly can be detrimental environmentally. It can have all kinds of negative impacts.

I am happy that Senator CHAFEE so graciously worked with me to include in this legislation the Pend Oreille amendment which is going to take a look at a problem in Lake Pend Oreille which is the largest lake in Idaho. It is a world class lake. It has the world class Kamloops trout in it. But the water that runs into the lake out of the Clark Fork River has brought a great deal of concern to a lot of my constituents. They feel that there is effluent in the Clark Fork River that is running into the lake. The EPA is directed by this bill to take a look at this, try to analyze if there is damage being done to the water quality in Lake Pend Oreille where it is coming from, whether it is coming from the Clark Fork River and the pulp and paper manufacturing mill up in Montana and running down into Lake Pend Oreille, whether it is actually coming from the many, many residences that surround the lake, or whether it is a combination of both.

I think we cannot risk having this pristine lake become damaged because of a lack of proper treatment of sewage if that is the problem, or proper treatment of effluent from the pulp and paper factory further upriver.

So I appreciate the chairman's cooperation on that. I would like to mention briefly that I hope the chairman can work out a solution on the formula. I think he worked it out pretty well in the committee. I hope that stands. I do not know whether that has been agreed to yet or not. But I appreciate the chairman's effort on that.

I would like to congratulate the committee on the interstate resolution section because it is extremely difficult to adequately protect the rights of both upstream and downstream States on water quality questions. I think that this section of the bill speaks as well to that as is possible.

I think it was good that in this bill we have extended industrial compliance deadlines to match the reality. I think that is another plus to the bill. The modifications on criminal and civil penalties in the bill are also sensitive and questionable but probably are appropriate. In my judgment they tend to lessen the risk of unfair legal actions. I am in support of issuing general permits to groups of dischargers with similar wastewater. I would prefer to leave nonpoint pollution control in the hands of the States.

I heard Senator STEVENS on the floor earlier. I would like to be on record as one who supports—and has been supportive—what the Alaska delegation is trying to do to establish a practical permitting system for the log transfer facilities.

There is one section of the bill that gives me a great deal of concern. I hope maybe something can be done about that. That is the part of the bill that gives EPA the authority to enforce compliance on Corps of Engineers section 404 permits. I would like to see an amendment to the bill that would correct that. I do not know whether it is forthcoming. But it appears to me that it is a problem that needs to be addressed, and needs to be studied so we can work out the differences between the EPA and the Corps of Engineers.

I think we are concerned in a general sense. I think everyone in this country wants pure, clean water. But the concern I have is that occasionally in our zeal to have a Clean Water Act that has national standards we impose standards that are far too rigid, and compliance is impractical.

If I can address the distinguished manager of the bill, the Senator from Rhode Island, I am making a point that the direction and thrust of the bill for clean water is good. I think all of us are in support of that. However, we have some problems in the Western States.

One that I would like to bring to the attention of the committee is that our State water quality standards include dissolved oxygen standards. They have served us pretty well the way they have been managed up to this point. The EPA looked at the State of Idaho and admits that they cannot observe adverse impacts of low oxygen content in the State. But in spite of this, EPA intends to issue stricter standards that will be very burdensome below many water impoundments.

I think the point that we are concerned with is that in low water years EPA standards may require wasting irrigation water and increasing the cost of electric generation when there is no damage being done to the fisheries.

I cite American Falls as a good example. In Idaho, at one of the finest fisheries in the State of Idaho or in the Nation, right below the dam there is apparently no damage, yet somehow the dissolved oxygen standards are not quite up to specs; what EPA thinks they ought to be. The fish do not seem to know it. They seem to do all right. The State of Idaho is in a position where I do not think it can comply. I wonder if the distinguished chairman from Rhode Island can offer a recommendation in this field or is there any way we can give guidance here on the floor of what is intended with this act with respect to what should be done.

I can see that we might end up in an irreconcilable position between the State of Idaho and the Environmental Protection Agency if the State were in some way asked to spill water over certain impoundments, water that was needed for the irrigation of crops, and they refused to do it and the legislature refused to require it.

I will ask the chairman if he can comment on that or give some guidance, possibly, for EPA, in the direction of this bill. Where do we want to go with this legislation?

(Mr. BOSCHWITZ assumed the chair.)

Mr. CHAFEE. First of all, I suppose one source of consolation is that this has been going on for many years and there have not been any problems arise so far.

Second, if warranted, if it is warranted according to the water quality standards regulations, a State may downgrade the designated stream use, consistent, of course, with public review and under the criteria spelled out under the regulations.

I know the concerns of the Senator as he has expressed them to me privately, but I just think this will be taken care of.

Mr. SYMMS. I appreciate the Senator's answer. There are two dams in the State which are equipped to monitor dissolved oxygen. Does the chairman think that the intention of EPA is that all dams are going to have to be retrofitted in this respect? What about private irrigation impoundments that are called dead water dams, so to speak?

I do not want to get into the situation where EPA is trying to force individuals to risk crops to meet standards that are not necessary. In other words, the Idaho Fish and Game Department says the fish are doing well, that there is no evidence of any damage being done. But I just think that we have risk here of an irreconcilable situation that could evolve in a low-water year. I think we ought to address that. I do not propose an amendment because I am not certain an amendment is appropriate. It seems like a very broad application of common sense on the part of EPA would be best. But we are now coming closer and closer to a confrontational situation between EPA and the State of Idaho. I would like to ask the chairman for some guidance on that and some guidance in the law, the intent, what is in store and what will happen if EPA has enough personnel to force compliance in every one of the estimated 100 impoundments in Idaho?

Mr. CHAFEE. In response to the question of the Senator from Idaho, I do not want to get into specifics, but I would say this: under the regulations, for a variety of reasons, some of which may pertain to this particular situation, the State, as I mentioned earlier, can downgrade the designated use of the stream. I think that is where the Senator's State might fit in.

Mr. SYMMS. So there may be a way out, then, for the State of Idaho?

Mr. CHAFEE. I believe so.

Mr. SYMMS. I thank the distinguished chairman. I might say that I will consult with my senior Senator on that and maybe we may have some more information before the bill is passed to place into the RECORD.

AMENDMENT NO. 340

(Purpose: To add a new provision to the bill to encourage to refrain from pursuing an independent enforcement action where a State is already taking or has already completed an appropriate enforcement action)

Mr. WALLOP. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

> The Senator from Wyoming [Mr. WALLOP] proposes an amendment numbered 340.

Mr. WALLOP. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

Mr. BYRD. Mr. President, it is a short amendment. I would like to have it read.

The PRESIDING OFFICER. The clerk will read the amendment.

The assistant legislative clerk read as follows:

> On page 29, after line 21, amend Section 309 of the Clean Water Act by adding to Section 109(d) of the bill the following new subsection:
>
> "(8) The Administrator shall refrain from pursuing any enforcement action relating to a violation for which the Administrator is authorized to assess a civil penalty if a State with an approved NPDES program has already commenced an enforcement action administratively, or in court, in good faith and the penalty assessed is in reasonable relationship to the violation."

Mr. WALLOP. Mr. President, this amendment simply adds a new subparagraph to section 309 of the Clean Water Act to encourage EPA to refrain from pursuing an independent enforcement action where a State is taking or has already completed an appropriate enforcement action. Presently, 36 States have assumed enforcement activities under the Clean Water Act, and they are, by EPA's admission and everyone else's, doing a good job. They deserve the chance to vigorously enforce the act's provision without undue interference from EPA.

Although it true at present that dual enforcement is rare, the new administrative penalties section heightens the chances for dual penalties under the act. Therefore, I think it is important that Congress clarify that, in setting out these new enforcement penalties, we do not intend for the States and EPA to impose administrative, civil or criminal penalties for the same violation. It simply is not fair to subject our cities, towns, and industries across the Nation to double jeopardy.

For over 100 years, those of us who represent Western States have been keenly aware of how precious our water resources are and how important State primacy is in protecting its availability for future use. I might say, Mr. President, that the Congress itself has recognized how important State primacy in these things can be if a State qualifies, and 36 States do qualify, to administer these laws or provisions of the Clean Water Act.

Water is of little use if it is not potable, Mr. President, or if it is a hazard to human health. Therefore, it is in the State's best interest to keep its waters clean and to clean up its polluted waters. This amendment of mine allows no compromise on the protection now afforded our Nation's waterway—none whatsoever.

Let me restate that: My amendment allows no compromise of the protection now afforded our Nation's waterways. Although States with approved

NPDES programs would have the lead in enforcement, EPA would still retain enforcement authority in these States and it could act if a penalty bears no reasonable relationship to the violation, or if the State is acting in bad faith.

In those States without an approved NPDES program, EPA would be—as it is now, and there is not anticipated a change—the primary enforcement authority. In fact, they would be the lead enforcement authority.

I believe this not only makes the intent of Congress clear with respect to primacy in enforcement, but by so doing, it gives the States the tools they need to vigorously enforce the Clean Water Act without worrying about duplicate enforcement actions being brought by EPA. If this were to happen, it would only undermine the authority of State officials and make the States shy away from spending any money at all to enforce the provisions of the act.

We simply do not need, nor has anyone demonstrated a need, for dual penalties under the act. We need the Federal Government working together with the States, not at odds with the States, to achieve the dual goals of clean waters within the deadlines that I approve of, and I expect Congress will endorse, that are set out in S. 1228.

A vote for this amendment is, in effect, a vote to gain the full cooperation of the States in working side by side with the Federal Government in a more meaningful way.

If we are, in fact, phasing out the Federal financial assistance to the States, as S. 1228 proposes to do, then let us give the States the very authority they need to enforce the act without undue Federal interference.

Mr. President, that is the essence of this amendment. It is, in effect, made and designed to say that when an enforcement action is underway, there should not be two agencies with which the offending polluter might have to deal, but one. Clearly, if the States are either incompetent or acting in bad faith, the ability to retrieve control over the program rests with the act. But absent such a showing, there is no justification whatsoever for people to have to deal twice on the same offense with officers of the Federal Government and the State government.

Mr. CHAFEE. Mr. President, if I might, I would like to ask two questions of the Senator from Wyoming in connection with his amendment.

Is the Senator conscious of some specific area where this has come up? Is he aware of an instance where this has occurred? To my knowledge, EPA has plenty to do and is not anxious to rush in and duplicate the efforts of a State where they are conducting enforcement actions.

Mr. WALLOP. Mr. President, I may say by way of beginning the conversation, should that be the case, there should be no objection to this amendment.

Let me suggest to my colleague that the new big-money penalties that are encompassed within this bill will tend to make that the case prospectively, rather than going on the basis of what we are now experiencing.

Mr. CHAFEE. I am not sure that that follows, Mr. President, but I take it that the Senator's answer is that he is not aware of any specific situation where this has taken place.

Mr. WALLOP. There are some, I might say to the Senator, that are relatively minor. We are not talking about the experience of the past. We are talking about what we can see coming by virtue of the changed circumstances that exist within this bill.

Mr. CHAFEE. Mr. President, I guess my difficulty is that the Senator seeks to change existing law that is in the bill and doing it with language that seems to be rather vague. In other words, there may well be a problem out there that the State is not taking action in, but we then get into the arguments over whether this is in good faith, how long it takes, how long we are going to give the States to get in there and take action. It seems to me that to give EPA the ability to do this, to keep EPA with this ability to do this makes sense and to deprive them of it does not seem to me the wisest move in the world, particularly when we have this rather vague language, as I say, about "in good faith" and "in reasonable relationship to the violation."

If we do not have a problem that the Senator can cite, Mr. President, it seems to me it would be better to go along with the existing law.

Mr. WALLOP. Mr. President, I might say to the Senator, if it would make him more happy, I could put a period after the words "or in court" and then take out that language which was meant to give a standard of reasonableness to this amendment. I might say the purpose of the amendment is clearly, not fuzzily stated. It says the administrator shall "refrain from pursuing any enforcement action relating to violation for which the administrator is authorized to assess a civil penalty if a State with an approved NPDES program has already commenced an enforcement action administratively, or in court."

That seems to be rather clear to the Senator from Wyoming. What is clear is, when you have something underway, not to have an offender and a State, or the State, EPA and the offender, all in the three-ring circus. We ought to try to resolve this issue on this basis.

...

Mr. STAFFORD. Mr. President, will the able Senator yield to me very briefly?

Mr. WALLOP. I am happy to yield, Mr. President.

Mr. STAFFORD. In the area of some instances where there does appear to be a duplication of intent or penalties, in view of the language in the legislation which is in front of the Senate this afternoon, would the Senator consider giving the situation a trial period, then, if instances of conflict do develop, coming in at some later time on the bill rather than over an amendment this afternoon?

Mr. WALLOP. I suggest to my friend that one of the obligations of leadership is to try to anticipate events which experience in the rest of Government clearly demonstrates are a likelihood. That is what we are trying to do. We are not trying to eliminate or even lessen the authority of the EPA. There is no such intention in my amendment, nor in the statement which I make in support of it. It is really only that we are trying to say that once an enforcement proceeding has begun, there ought to be only one person to deal with. There is within the Clean Water Act the ability to remove the authority for States to act if they are either incompetent or act in bad faith. That is not a word of art that is invented by the Senator from Wyoming but the way the world goes and has gone in this.

I am suggesting that with the new penalties, which I approve, there is now in this world a real potential for conflict. I think any of us who have witnessed Government at work would say this is a totally credible argument. Why shouldn't we make the purpose of Congress clear in that our objective is clean water, not harassment.

Mr. STAFFORD. Mr. President, the Senator from Vermont feels much as the Senator from Rhode Island, that in the absence of indications there have been difficulties, it would be best not to intrude this additional amendment on the bill this afternoon.

I yield the floor.

Mr. CHAFEE. Mr. President, I recognize the concerns of the Senator from Wyoming. If we wanted some kind of legislative history as to the direction in which we wish this legislation to move, I think that makes sense; we are doing it right now in the form of a colloquy, and I would be glad to extend that to any degree that the Senator thought wise.

Mr. WALLOP. The Senator from Wyoming has yet to hear an argument against this except that it has not happened yet. It does not, in my estimation, eliminate or diminish the authority of the EPA to enforce clean water standards as approved by the Congress. It has no such intention, nor does the amendment state such a purpose. It strikes me absent that the Senate ought to have an opportunity to vote on this if nothing else. What we are literally trying to do is say to the people of America who are involved in enforcement actions that they are either going to be enforced by States with approved programs or by the Federal Government, but not both at the same time once an action has been undertaken.

If that can be found offensive, let us hear that argument. But to this moment it has yet to be offered.

Mr. CHAFEE. Mr. President, what is in the back of the minds of anybody who has wrestled with the Clean Water Act across the whole country and the Corps of Engineers and different problems we are encountering, the disappearance of the wetlands, clearly there is a concern that you could well have a situation where a State did not undertake these duties with such seriousness as is commensurate with the violation.

Mr. WALLOP. Is the Senator suggesting to the Senator from Wyoming that the power to do that is diminished by my amendment?

Mr. CHAFEE. Yes, it clearly is.

Mr. WALLOP. Where?

Mr. CHAFEE. It clearly is because the Senator's amendment says that where an action is started——

Mr. WALLOP. The Senator can read English as well as the Senator from Wyoming. It does not. It says "refrain from." It does not say "prohibit." It is a policy statement, is it not?

Mr. CHAFEE. No. No, it is far more than a policy statement. It is law. It becomes law if the amendment is adopted. The amendment says that they cannot pursue——

Mr. WALLOP. It does not say that. Will the Senator point out to the Senator from Wyoming where it says that?

Mr. CHAFEE. How else can you interpret the word "refrain"? Does the Senator mean you can go ahead and do it while the enforcement action is being pursued by the State? Clearly not.

Mr. WALLOP. Is it the position of the Senator that is the only controlling provision within the Clean Water Act and that the Administrator does not have the ability to remove from a State their approved program under the NPDES if they are not acting in good faith? The point of the Senator from Wyoming is clearly that no person in the United States should have to confront two levels of Government at the same time under an enforcement action of the laws which the Congress of the United States has said the States that have approved programs are competent to administer.

Mr. CHAFEE. I think the issues have been stated.

Mr. MITCHELL. Does the Senator yield the floor?

Mr. WALLOP. Absolutely.

The PRESIDING OFFICER. The Senator from Maine.

Mr. MITCHELL. Mr. President, there is an old saying that, when I came here, I thought originated in Maine, but since then it has been quoted by almost every Senator on this floor in a variety of ways. It is, "If it ain't broke, don't fix it."

I think that applies to this amendment. Not a single fact, not a shred of evidence has been offered to document or demonstrate that there has been duplication of this authority. The authority for the EPA to act in those States which have received delegation of enforcement of this program has existed for a substantial period of time. If there were evidence of duplicate actions by the EPA during that period, we can be certain that they would have been referred to today. They have not been because there is no such evidence, because in general the EPA has deferred to those States which have received the delegation of authority.

That does not mean they have been forced to do so, but they have, in the interest of common sense and preservation of their enforcement resources, the natural disinclination to subject an alleged violator to two separate actions. That is not to say it could not happen or that there might not be circumstances in which it would be justified if the State action, for example, were not vigorous or meaningful.

This amendment is intended to reduce litigation, but I submit it will spawn far more litigation than it is intended to reduce. How to decide whether or not an enforcement action brought by a State was or was not brought in good faith would clearly be the subject of extensive litigation, and how to determine after a penalty has been assessed in a particular case that the penalty was in reasonable relationship to the violation or not would itself be the subject of substantial litigation.

These are all subjective judgments. They are the products of enforcement actions brought in court in which both sides present their evidence and then a judge somewhere makes a determination.

Mr. President, in the absence of anything being wrong with the program, with the fact being that every one of the States which accepted authority from the EPA did so with the full public knowledge that the EPA retained the authority to bring an action where it deemed it appropriate, this amendment really is an answer in search of a problem. We do not have a problem. There has been no evidence of a problem.

In that event I think we ought to leave things as a they are. Il a prob-
leave things as they are. If a probcate actions are brought in a manner that are demonstrably harassing or do not serve any useful purpose to further the ends of the Clean Water Act, then I think we ought to hear that evidence and, if appropriate, act on it. But we have not reached that stage yet. Therefore, I urge my colleagues not to support this amendment.

Mr. WALLOP. Mr. President, I send to the desk an amendment to my amendment.

The PRESIDING OFFICER. The Chair informs the Senator from Wyoming that until he has lost the right to modify his amendment, he cannot amend his amendment.

Mr. WALLOP. Will the Chair restate that? I understood the Chair to say that until I have lost the right to amend my amendment, I cannot amend it.

The PRESIDING OFFICER. To modify his amendment.

Mr. BYRD. What the Chair is saying is that the Senator can modify his amendment. He cannot send to the desk an amendment to his own amendment unless some action has been taken.

Mr. WALLOP. I thank the minority leader.

Mr. President, I will restate it.

I send to the desk a modification of my amendment.

The PRESIDING OFFICER. The Senator has that right.

The clerk will state the modification.

The legislative clerk read as follows:

In the next-to-the-last line, after the word "court," insert a period and strike the balance of the amendment.

The modified amendment is as follows:

On page 29, after line 21, amend Section 309 of the Clean Water Act by adding to Section 109(d) of the bill the following new subsection:

"(8) The administrator shall refrain from pursuing any enforcement action relating to a violation for which the Administrator is authorized to assess a civil penalty if a State with an approved NPDES program has already commenced an enforcement action administratively, or in court."

Mr. WALLOP. Mr. President, this takes into account some of the things which the Senator from Maine and the Senator from Rhode Island have expressed.

The arguments raised against the amendment are really an absurdity. If one were to follow the reasoning laid down by the Senator from Maine, Congress would never do anything until a crisis had approached.

The obligation of leadership is to try to make those laws that we pass work to the extent we intend them to. One of the extents to which we expect a Clean Water Act to work is that the States which wish to and have the competence to administer their own programs be permitted to do so.

I understand that there is a position that would not have granted the States this authority at any time. There is also a position I have heard expressed here today that there is a general level of mistrust of these States. If that is the case, let us honestly take on the issue and say it.

Absent that, can anyone explain to me why any citizen of the United States, corporate or individual, should have the obligation to deal with two levels of government at the same time for the same offense? That is the only purpose of this amendment—that when an action has been undertaken, you do not suddenly find yourself engaged on two fronts. That is not the purpose of this Clean Water Act. The purpose of the Clean Water Act is clean water, not some sort of bureaucratic harassment.

To say that it has not happened and a shred of evidence has not been offered, I can offer the Senate volumes of cases where it has happened in other administrative circumstances that the United States has on its books.

We have now a Clean Water Act, with new penalties and a new set of circumstances. Are we to be told that as Senators we cannot look into the future and anticipate problems? Are we to be told, once again, that we are not competent to lead the country as we are being asked to do?

This is a suggestion that we do not have dual enforcement imposed upon the citizens of the United States unless there is some compelling reason to do so, which would not be prohibited either under the act, or under my amendment.

Mr. MITCHELL. May I respond to the Senator?

The PRESIDING OFFICER (Mr. COHEN). The Senator form Maine.

Mr. MITCHELL. Mr. President, the Senator has suggested that no citizen of this country, individual or corporate, should be subjected to dual enforcement of the law, under any circumstances.

Mr. WALLOP. No, only under circumstances that concern the Senate on the Clean Water Act.

Mr. MITCHELL. Mr. President, every citizen of this country, including every person in this room, is subject in numerous circumstances to dual enforcement of the laws.

There are literally hundreds of actions which you, as an individual citizen, can take which would subject you to a prosecution under State law and under Federal law. They are all through the law books of this country. Dual prosecution, the jurisdiction of which is available to both Federal and States, exists in numerous examples. It is in the criminal law. If you rob a bank, you can be prosecuted by the State and the Federal Government. If you are engaged in any form of drug activity, you can be prosecuted by the State and the Federal Government. So on down an enormous list. This is nothing new.

Generally, State and Federal authorities cooperate to avoid duplicate prosecution. That is what has happened here. There is not any problem. No evidence of a problem of any kind has been suggested.

While the Senator suggests that it is leadership to anticipate problems and try to deal with them, it is also a form of leadership, I suggest, not to encumber the law books of this country with solutions to problems that do not exist. This is a problem that does not exist. There is absolutely no evidence of it, even though the dual authority has existed in law for some period of time.

All we are talking about here is trying to solve a problem that does not exist. By striking out the last two lines, the Senator solved one problem and created another.

One reason for this dual authority, frankly, is that there might be circumstances under which a State agency, confronted with a violation of the act by some significant entity within that State, would be reluctant to act or to act in a manner that was not the most vigorous. Under those circumstances, the authority to act at the national level is preserved, for good reason. It has not been abused. There is no evidence that it has even been used.

Therefore, under the circumstances, I submit that the Senate should not adopt the amendment.

Mr. WALLOP. I say to my friend from Maine that the argument has gone so far afield from reality that I scarcely recognize the amendment.

There is nothing in this amendment which would prevent the EPA from acting after a State had acted, if they thought the case had not been pursued vigorously enough.

Why should corporate or individual citizens of America confront two administrative procedures at the same time when there is absolutely no reason to do so? There is nothing that prevents the EPA from going in after these things are done.

Look at what the amendment says: "refrain from pursuing any enforcement action . . . if a State with an approved NPDES program has already commenced an enforcement action administratively, or in court."

Mr. MITCHELL. That is exactly what it says.

Mr. WALLOP. Is there anything in this amendment to say that if it has not been done well enough, the EPA cannot go in?

Mr. MITCHELL. That is what it says.

Mr. WALLOP. It does not say any such thing, and the words cannot be made to say that.

Mr. President, it is an impossibility to argue on the basis of fighting ghosts. There is one English language we all speak, and this is the one we are speaking, and it does not prevent them from any such thing.

Mr. CHAFEE. Mr. President, let us agree that we are all using the English language. But the English language says that the Administrator shall refrain from pursuing—in other words, he shall not be able to pursue—any enforcement action if the State has commenced an enforcement action administratively or in court. So the State is not out to punish these people. It is going to tap them on the wrist, but not severely. The State starts an action, lets it lay there, and nothing happens. So what is left to be done for the EPA? They cannot do anything as long as that action is in court, because, according to the Wallop amendment, an action has been commenced; that is all.

He took out the last words. It is a classic case of trying to correct something but making it worse by attempting to do so.

The State does not have to pursue this. So what we are doing is abrogating the ability of the Federal Government in any way to become involved in enforcement actions under any circumstances. I think that to deprive the Federal Government of that power through the EPA does not make sense.

Mr. WALLOP. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. WALLOP. Mr. President, it is amusing to the Senator from Wyoming to see the defenses thrown up against this rather simple statement of States rights.

In point of fact the Senator modified his amendment with a change in the language at the end because the Senator from Rhode Island and the Senator from Maine suggested it would involve the EPA in litigation. God knows we do not want them to do that.

The purpose of the amendment is clear. I have spoken to it. The arguments raised against it have not been on a substantive basis, but on the rather emotional one that somehow or another the States cannot be trusted. If that is the case, I suggest we deal with that problem more by removing the authority of States to have enforcement privileges under the NPDES and not say to the citizens who are the brunt of all these things that they have to confront two tigers in the same cage. One is generally plenty, especially when you take a look at how this act strengthens the enforcement provisions of the Clean Water Act by increasing civil penalties from $10,000 to $25,000 a day, and by increasing administrative penalties from $10,000 a day to a maximum of $125,000 per day.

There is plenty of reason why this amendment is offered. It is offered on the experience this Senator has had and witnessed in the procedures by which the United States sometimes seeks to place its hammer on the folks that it ostensibly serves. I would hope the Senate would say that we still are in the posture of trying to serve our public, not to quash it.

I yield.

Mr. CHAFEE. Mr. President, this is not a States rights vote. This is clearly an environmental vote.

What is being attempted here in this amendment is, as clearly stated, to deprive the EPA of having the power to move if the State commences an action administratively, or in the courts, and does nothing further. It does not have to have good faith. It does not have to press it to a reasonable degree, that the penalty has any reasonable relationship to the violation. Those words were taken out. The vagueness of them made it necessary to take them out. Therefore, there are not standards whatsoever.

So, Mr. President, we are up to really the first clear environmental vote on the Clean Water Act.

Mr. WALLOP. Mr. President, I ask unanimous consent that the list of the 36 States with approved NPDES programs be printed in the Record.

There being no objection, the list was ordered to be printed in the Record, as follows:

States With Approved NPDES Programs

Alabama, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Indiana, Iowa.

Kansas, Kentucky, Georgia, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana.

Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania.

Rhode Island, South Carolina, Tennessee, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming.

Mr. WALLOP. Mr. President, I have nothing further to offer by way of explanation of this amendment. I think the issue is clear. It is not an environmental vote. It does not seek to change the Clean Water Act. It is only the people of this country when confronted with the problems they have on it to confront one of them at a time.

Mr. CHAFEE. If the Senator has nothing further, I shall move to table.

Mr. MITCHELL. Will the Senator withhold that?

Mr. CHAFEE. I withhold.

Mr. MITCHELL. Mr. President, I wish to clarify just one point with the Senator.

Mr. WALLOP. I think the Senator from Rhode Island moved to table.

Mr. MITCHELL. No; he withheld the motion to table at my request.

This reads:

> The Administrator shall refrain from pursuing any enforcement action relating to a violation for which the Administrator is authorized to assess a civil penalty if a State with an approved NPDES program has already commenced an enforcement action administratively, or in court.

I understand the situation to be, and I want to confirm the Senator's intention, that in many cases the Administrator can pursue an enforcement action and be authorized to assess both a civil and a criminal penalty, and, therefore, this amendment would affect the authority of the Administrator under any action which he is authorized to, not merely those that involve civil penalties since the authority exists in most cases to do both.

Mr. WALLOP. The Senator is absolutely correct. But it is for a period of time when an action has already been started administratively or in court by a State.

Mr. MITCHELL. Right.

Mr. WALLOP. And the word "refrain" was specifically chosen. It does not prohibit him forever. It talks about a time when these procedures are underway. I do not know who in this room rejoices in the idea that you have to have a new set of lawyers and a double-barrel set of defenses for the same event at the same moment in time.

All we are asking is that you do one battle at a time. If the EPA does not like what the State has done or wishes to assault that thing before the State has taken action, nothing in this amendment prohibits it.

Mr. MITCHELL. I understand that, and I thank the Senator. I merely wanted to clarify the other point that this applies to enforcement actions in which the EPA administrator is authorized to assess a civil penalty. In many such cases the administrator is also authorized to go to court and seek a criminal penalty. So this is not limited by this language. I did not know whether the Senator intended to limit it to civil penalty action.

Mr. WALLOP. The Senator did not.

Mr. MITCHELL. He did not.

Mr. WALLOP. The words are equal to the rights of the State-approved program as well as the Federal Government.

Mr. MITCHELL. I thank the Senator.

That is the point I wanted to clarify because reading the amendment some might conclude that it is limited to instances in which only a civil penalty can be assessed, but as the Senator has made clear and undertands, in most of these cases there is a concurrent authority which could be utilized in other areas.

I thank the Senator for the clarification, and I merely say in summary and repeat that I believe this is an effort to solve the problem that does exist.

I urge Senators to support the motion to table I understand the Senator is making.

Mr. CHAFEE. Mr. President, if there is nothing further to be said on this amendment and the Senator from Wyoming has completed, I move to table the amendment of the Senator from Wyoming and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Rhode Island to lay on the table the amendment of the Senator from Wyoming.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from North Carolina [Mr. East], and the Senator from Kansas [Mrs. Kassebaum] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Arkansas [Mr. Bumpers], and the Senator from Mississippi [Mr. Stennis] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 70, nays 26, as follows:

[Rollcall Vote No. 125 Leg.]

YEAS—70

Andrews
Baucus
Bentsen
Biden
Bingaman
Boren
Boschwitz
Bradley
Burdick
Byrd
Chafee
Chiles
Cochran
Cohen
Cranston
D'Amato
Danforth
DeConcini
Denton
Dixon
Dodd
Dole
Durenberger
Eagleton
Evans
Exon
Ford
Glenn
Gore
Gorton
Grassley
Harkin
Hart
Hawkins
Heinz
Hollings
Humphrey
Inouye
Johnston
Kasten
Kennedy
Kerry
Lautenberg
Leahy
Levin
Lugar
Mathias
Matsunaga
Melcher
Metzenbaum
Mitchell
Moynihan
Packwood
Pell
Pressler
Proxmire
Pryor
Riegle
Rockefeller
Roth
Rudman
Sarbanes
Sasser
Simon
Specter
Stafford
Trible
Warner
Weicker
Zorinsky

NAYS—26

Abdnor
Armstrong
Domenici
Garn
Goldwater
Gramm
Hatch
Hatfield
Hecht
Heflin
Helms
Laxalt
Long
Mattingly
McClure
McConnell
Murkowski
Nickles
Nunn
Quayle
Simpson
Stevens
Symms
Thurmond
Wallop
Wilson

NOT VOTING—4

Bumpers
East
Kassebaum
Stennis

So the motion to lay on the table amendment No. 340, as modified, was agreed to.

Mr. **CHAFEE**. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. **STAFFORD**. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The **PRESIDING OFFICER**. The Senator from Texas.

AMENDMENT NO. 341

Mr. **BENTSEN**. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The **PRESIDING OFFICER**. The amendment will be stated.

The bill clerk read as follows:

The Senator from Texas (Mr. Bentsen), for himself and Mr. Simpson, proposes an amendment numbered 341.

On page 51, line 6, after "operations" insert "(including transmission pumping stations)".

On page 51, line 10, strike "above background levels".

Mr. **BENTSEN**. Mr. President, I offer this amendment on behalf of myself and Senator Simpson. I have discussed the amendment with the two managers and I believe it is acceptable to them. The amendment refers to page 51 of the bill and speaks to those things for which the administrator shall not require a permit.

The amendment clarifies that oil and gas transmission pumping stations are included within that section of the bill for which permits would not be required.

The term would apply to pumping and gas compressor stations for oil and gas transmission operations.

For example, compressor stations are located at intervals along a pipeline and they are designed to pump natural gas through those underground pipelines. These facilities are maintained in a manner comparable to what you would find in most residential properties.

These stations normally require about 5 acres, but in practice they will be buffered with 10 to 150 acres. Traditionally, they are buffered by grassland or timber. Consequently, storm water runoffs from such transmission operations result in no significant contribution of any contamination of the water. Therefore, it is my opinion that they ought to be included in that listing of eligible categories that are under that section. I urge adoption of the amendment.

The **PRESIDING OFFICER**. The Senator from Rhode Island.

Mr. **CHAFEE**. Mr. President, the amendment is satisfactory to this side. I urge its adoption.

Mr. **MITCHELL**. Mr. President, I have no objection to the amendment.

The **PRESIDING OFFICER**. Without objection, the amendment is agreed to.

The amendment (No. 341) was agreed to.

Mr. **BENTSEN**. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. **CHAFEE**. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The **PRESIDING OFFICER**. The Senator from Rhode Island.

AMENDMENT NO. 342

Mr. **CHAFEE**. Mr. President, on behalf of myself and Senators Mitchell, Stafford, Bentsen, Durenberger, and Moynihan, I send to the desk a committee amendment and ask for its immediate consideration.

The **PRESIDING OFFICER**. The clerk will report.

The bill clerk read as follows:

The Senator from Rhode Island [Mr. Chaffe], for himself, Mr. Stafford, Mr. Durenberger, Mr. Bentsen, Mr. Moynihan, and Mr. Mitchell, proposes an amendment numbered 342.

Mr. **CHAFEE**. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The **PRESIDING OFFICER**. Without objection, it is so ordered.

The amendment is as follows:

On page 77, line 10, strike "paragraph" and insert in lieu thereof "paragraphs".

On page 77, after line 10, insert the following:

"(3) Sums authorized to be appropriated pursuant to section 207 for the fiscal years 1986, 1987, and 1988 shall be allotted for each such year by the Administrator not later than the tenth day which begins after the date of enactment of the Clean Water Act Amendments of 1985. Sums authorized for such fiscal years shall be allotted in accordance with the following table:

State:	
Alabama	0.012442
Alaska	0.007321
Arizona	0.012442
Arkansas	0.000002
California	0.061966
Colorado	0.009785
Connecticut	0.012442
Delaware	0.005001
District of Columbia	0.005958
Florida	0.044973
Georgia	0.014649
Hawaii	0.007440
Idaho	0.005958
Illinois	0.039186
Indiana	0.020881
Iowa	0.012614
Kansas	0.011041

Kentucky	0.014975
Louisiana	0.014314
Maine	0.009346
Maryland	0.020955
Massachusetts	0.036028
Michigan	0.037255
Minnesota	0.015925
Mississippi	0.012442
Missouri	0.025305
Montana	0.005411
Nebraska	0.006257
Nevada	0.005958
New Hampshire	0.012442
New Jersey	0.048642
New Mexico	0.005958
New York	0.096132
North Carolina	0.016094
North Dakota	0.004658
Ohio	0.048776
Oklahoma	0.009882
Oregon	0.011794
Pennsylvania	0.034320
Rhode Island	0.007428
South Carolina	0.013337
South Dakota	0.005958
Tennessee	0.016597
Texas	0.053634
Utah	0.006445
Vermont	0.005958
Virginia	0.017732
Washington	0.028533
West Virginia	0.013507
Wisconsin	0.023423
Wyoming	0.005359
American Samoa	0.000778
Northern Marianas	0.000531
Puerto Rico	0.012582
Trust Territory	0.001403
Virgin Islands	0.000462

On page 77, line 11, strike "(3)" and insert in lieu thereof "(4)".

On page 77, lines 12 and 13, strike "fiscal years 1986, 1987, 1988, 1989, and 1990" and insert in lieu thereof "fiscal years 1989 and 1990".

On page 83, line 10, strike "1½ percentum" and insert in lieu thereof "1 percentum (during fiscal years 1986, 1987, and 1988) or 1¼ percentum (during fiscal years 1989 and 1990)".

On page 86, line 7, strike "Sums" and insert in lieu thereof "For fiscal years 1989 and 1990, sums".

Mr. CHAFEE. Mr. President, I ask unanimous consent that the distinguished Senator from Michigan, Senator LEVIN, be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHAFEE. Mr. President, this is the allotment formula for the distribution of the construction grants. As the Chair knows, in the committee bill was an allotment formula. That aroused some problems. The allotment formula was a change from the 1981 law.

The changes came about for a variety of reasons.

One, there was a new need survey conducted in which the States were to set forth, with the help of EPA, their needs as of 1984.

Two, in 1981, the eligibility of certain items was revised. In other words, no longer were the collectors permitted to be included as in the needs formula.

No longer were the combined sewer overflow requirements permitted to be in the formula.

Thus, that changed the items that went into the formula and affected it.

One thing would have been to just accept current law, just go along with the law as it previously existed without considering these revisions that had taken place under the 1981 law, without considering the change in needs as being reported in from the States.

However, we did not think that was fair, so in the committee we revised the formula and presented it here. There were some objections, and those were understandable.

Some of the States took some precipitous drops.

We then arrived at a compromise with those who were principally objecting.

Under the compromise, the following items came into effort.

One, there was an 85-percent hold harmless for the so-called tier 1 States. That is what you call the larger States.

Two, there was a cap of 20 percent on the increases in the so-called tier 2 and tier 3 States, which are the smaller States. Although in some instances what they would have received under the formula would have been larger, there is a cap of 20 percent included there. We also provide that, although the allotment formula as it now is in the bill is for 5 years, through 1990, the compromise formula will only apply for 3 years. Then we shall go to the committee formula for the balance.

Mr. President, like all compromises, this does not make everybody happy, but I think it is a reasonable one in that, where some of the States had, as I mentioned earlier, taken dramatic cuts, those cuts were reduced to some degree. Let us look for example, at New York. New York, under the committee formula, is currently receiving $230 million. Under the committee bill, they would have gone to $213 million. This puts them at $228 million. In other words, they go up some $15 million.

So it is for a variety of the other States, mostly in the New England States, most of which had the combined sewer and overflows, which were taken out in 1971.

There were some who thought we should to to the so-called Durenberger formula. Indeed, in that instance, many of the so-called larger States would have gone up not from the original formula but from the committee formula. The trouble with that is that that formula would not have passed. It would have caused some States to drop precipitately. We are particularly referring to the smaller States.

Mr. President, in the smaller States, we did have, as is quite common in legislation of this sort, the one-half percent minimum. That is, no State went below or was entitled to less than one-half percent. This is rather a common basis to use in our formulas as we have used in others.

I see my good friend from Minnesota is up here to contest whether the Durenberger-Moynihan proposal would have passed or not. I indicated it would not. One of the problems with the Moynihan-Durenberger formula is that, as I mentioned earlier, if it had gone into effect, some States would have declined precipitately.

Let us take North Dakota. It would have gone from $11 million, which they are currently getting, down to $4 million. I might just casually point out Rhode Island would have dropped from $16 million to $7 million, which would not have been greeted with cheers.

As I have mentioned before, the distinguished chairman of the full committee, the distinguished ranking member of the full committee, the distinguished ranking member of the subcommittee, the Senator from Maine [Mr. MITCHELL], and myself, the chairman of the subcommittee, support this compromise.

Mr. DURENBERGER. Mr. President, in the year 1829 the nation of Canada began what many believe is its greatest engineering achievement. This project is called the Welland Ship Canal. It forms the navigable waterway between Lake Ontario and Lake Erie and is 26 miles long. These two lakes are also connected by the Niagara River, but to the delight of honeymooners for decades, navigation of the Niagara is not possible.

So we have the Welland Canal. It is an important part of the St. Lawrence Seaway system. It makes the city of Duluth, in my home State of Minnesota, an international seaport. The canal has been continuously improved, most recently in 1973. That project to straighten 8 miles of the ship channel cost $110 million. The Welland Canal is, then, a vital water resources project which has been of great benefit to the people of my State and the Great Lakes region.

But like so many manmade wonders of the world, the Welland has had other consequences. One of these was an environmental disaster of considerable proportion. Construction of the canal allowed a species of fish commonly called the lamprey eel to migrate into the Upper Great Lakes—especially to Lake Huron and Lake Michigan.

The lamprey eel is one of the least developed of the class of animals called vertebrates. Vertebrates generally have backbones. Lampreys do not. They are long—up to 30 inches—needle-shaped creatures that attach themselves to their prey by a sucking mouth. Using their teeth, they cut into their prey and suck out the blood and bodily fluids. During a lifetime, one lamprey will consume up to 20 pounds of other fish.

Because it was not native to the Upper Great Lakes, the sudden infestation of lamprey eels greatly upset the biological balance in the lakes. The principal victim of the lamprey invasion was the lake trout. At one time, lake trout were almost completely destroyed in Lake Huron and Lake Michigan. I will quote briefly from an article published by the Conservation Foundation on this subject:

> The speed of the decline is shown by the fact that, in 1943, 6.8 million pounds of trout were taken from (Lake) Michigan, whereas, in 1952, the catch was down to 4,000 pounds. It is difficult now to imagine the magnitude of the lamprey feeding frenzy. At peak abundance in Lake Michigan alone they destroyed 5 million pounds of fish annually. With lake trout gone the predators turned to burbot, chub, whitefish, lake herring, perch and walleyes.

As I said—an environmental disaster of considerable proportion. The "frenzy" referred to in the article occurred when I was a young man, well before the environmental movement swept the country. But I remember the impression it made in the Great Lakes region. It was a striking sign that our human activities can drastically alter vast natural resources in fundamental ways.

Mr. President, I bring this bit of natural history to the attention of the Senate because I believe the bill before us is, in one respect at least, the moral equivalent of the lamprey eel. I speak, as my colleagues expect, of the new allocation formula for the Construction Grants Program which is contained in this legislation.

I believe this formula threatens a truly national resource—a continental resource—the Great Lakes—with lasting environmental harm. The effect of adopting this formula would be to reduce sewage treatment construction expenditures in the eight Great Lakes States by nearly $200 million per year—each and every year.

Because our Nation so highly values the Great Lakes, we have entered into treaties and agreements with Canada to protect the water quality in the lakes. The formula reported by the committee violates those treaties and agreements. In fact, Canada filed a note of diplomatic protest with the State Department at the time the bill was reported. The diplomatic note followed a letter written by Ambassador Gotlieb to the committee chairman at the time of markup.

Let me read the text of the Canadian diplomatic protest into the RECORD at this point:

> The Embassy of Canada presents its compliments to the United States Department

of State and has the honor to refer an amendment to the Clean Water Act passed by the United States Senate's Environment and Public Works Committee on May 1, 1985.

The Government of Canada is concerned that the amendment, which designates an allocation formula for funding municipal sewage facilities, would, if given full congressional approval, significantly diminish United States Federal contributions to projects in the Great Lakes Basin. This may have implications for the United States ability to meet its commitments under the Canada-United States Great Lakes Water Quality Agreement of 1978.

The Government of Canada wishes to point out that the latest report of the International Joint Commission's Great Lakes Water Quality Board indicates that the Great Lakes States will not be in compliance with the objectives of the Agreement for several years. The Agreement commits both Canada and the United States to provide "financial assistance to construct publicly owned waste treatment works" in the Great Lakes region. The Government of Canada is concerned that reduced funding for such works at this time could further delay compliance. In this context, the Embassy would be grateful to receive information on which Great Lakes facilities would be affected by the amendment.

In view of the concerns set out above, the Embassy requests the Department of State to draw to the attention of the Congressional Committees dealing with reauthorization of the Clean Water Act, the potential implications for the Canada-United States Great Lakes Water Quality Agreement of the Senate Committee amendment of the waste water treatment funding formula. The Embassy further requests that the text of this note be made available to these Committees.

The Embassy of Canada avails itself of this opportunity to renew to the United States Department of State the assurances of its highest consideration.

Mr. President, this note was initialed by the Ambassador of Canada and dated May 14, 1985.

Mr. President, I ask unanimous consent that the letter from Ambassador Gotlieb to the distinguished chairman of the Committee on Environment and Public Works, dated April 30, 1985, also be printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

CANADIAN EMBASSY,
Washington, DC, April 30, 1985.

Hon. ROBERT T. STAFFORD,
Chairman, Committee on Environment and Public Works, Washington, DC.

DEAR SENATOR STAFFORD: We have just learned that an amendmewnt to the Clean Water Act having potentially adverse implications for Great Lakes water quality will be considered in your committee on May 1, 1985.

It is our understanding that the amendment would designate an allocation formula for funding municipal sewerage facilities which would substantially diminish federal contributions to projects in the Great Lakes basin. This could jeopardize the United States ability to meet its commitments under the 1978 Canada-USA Great Lakes Water Quality Agreement.

According to the latest report of the International Joint Commission's Great Lakes Water Quality Board, the Great Lakes states are still a few years away from compliance with the objectives of the Agreement.

As I am sure you know, under the Great Lakes Water Quality Agreement, both countries made a commitment to provide "financial assistance to construct publicly owned waste treatment works" in the Great Lakes region.

I would therefore be most grateful if you would take into consideration the concerns noted above should any measure be proposed which could have a negative impact on United States obligations arising from the Agreement.

Yours sincerely,

ALLAN GOTLIEB,
Ambassador.

Mr. DURENBERGER. Mr. President, I think we must ask ourselves why the Environment Committee of the U.S. Senate would change the formula for sewer grants to the point that a national treasure like the Great Lakes is threatened and our dearest friend in the community of nations is filing diplomatic protests?

We all know and have deep regard for the record of environmental protection and resource conservation established by the distinguished chairman of the committee, the Senator from Vermont [Mr. STAFFORD]. The same can be said for the managers of this bill, the Senators from Rhode Island and Maine [Mr. CHAFEE and Mr. MITCHELL], always reliable and unselfish defenders of natural resources. The Senate knows them as such. We hold each of these friends and colleagues in the highest regard. And hailing as they do from New England, they are all close neighbors of Canada and the Great Lakes region.

So why are they proposing that we change the formula? That's the first question that should be asked. The committee is proposing that the formula be changed. And before we go on to consider alternatives—other formulas—we ought to examine the reasons that the committee gives to justify the changes it proposes.

For instance, if the committee were proposing these changes because it believed that the changes were necessary to improve water quality on a national basis, then there might be good reason to support the committee bill. The purpose of the Clean Water Act is to improve water quality. The Senate relies on the expertise of the committee to design programs that will achieve that objective. So if the committee came to the Senate and said we need this formula to improve water quality we would owe them some deference. We would want to defer to their judgment as is the custom in the Senate.

But is that, in fact, what the committee is saying? No. The committee freely admits that the changes they are proposing have nothing to do with improving water quality. Let me quote the committee report on this point:

> The 1981 amendments directed the preparation of a needs survey in which the allotment of sewage treatment construction funds could be related to water quality improvements, rather than merely to the estimated dollar costs of proposed treatment facilities. The 1984 needs survey does contain a water quality assessment, but information was not available in sufficient detail on which to base state-by-state allotments.

So the formula changes proposed by the committee are not intended to advance the fundamental purpose of the Clean Water Act, improvements in water quality. And we owe the committee and the committee formula no deference on that count.

If the committee were proposing some major restructuring of the construction grants program to make sure that it better reflects national needs and budgetary resources, then a change in the formula might be necessary. We might need to tighten up the program and we would want to defer to the committee's judgment on how to do that.

Is the committee proposing such changes? No. A restructuring of the program was made by the 1981 amendments. Funding levels were cut drastically. Certain types of sewer projects were dropped from the list of those eligible for Federal funds. The National Government quit subsidizing growth. And the formula was changed. But no such restructuring is being proposed this year. The committee does not attempt to justify its proposed reallocation by arguing that there is a new program which requires a change in the distribution of funds. So we owe the committee no deference on that count.

Sometimes formulas designed here in the Congress turn out to be fatally flawed when put into practice out in the field. I think of the general revenue sharing formula, for instance. Because of a quirk in that statistical model many small cities in New Jersey have changed their form of government to townships so that they would receive more Federal funds. Flaws like that should be fixed.

But is anyone here claiming that the current formula for the construction grants program is in some way so badly flawed that it needs correction? No. In fact, the committee received a letter from the association of State and Interstate Water Pollution Control Administrators—an organization representing all 50 States and the territories—which indicated that it was their judgment that the formula should not be changed at all—that the current formula worked just fine. So we owe the committee no deference on that count.

Mr. President, I ask unanimous consent that the letter from ASIWPCA be printed at this point in the Record.

There being no objection, the letter was ordered to be printed in the Record, as follows:

Association of State and
Interstate Water Pollution
Control Administrators,
Washington, DC, April 5, 1985.

Hon. Robert T. Stafford,
U.S. Senate,
Washington, DC.

Dear Senator Stafford: This is in response to your recent request for information relating to the general sense and the perspectives of the Association of State and Interstate Water Pollution Control Administrators membership concerning the revision of the existing allocation formula and federal cost share (55%) for the municipal sewage treatment facililties grant program.

Let me emphasize from the outset that while these subjects were not discussed as a part of the ASIWPCA priorities for the reauthorization of the Clean Water Act (copy attached), it is clearly the sense of the ASIWPCA Board of Direction and majority of the States attending ASIWPCA's midwinter membership meeting, that the existing formula and cost share are adequate and need not be addressed as a part of the Congressional reauthorization process. This is emphasized by several State Directors after examining the President's FY 86 Budget and the concept of a four year phase out of the construction grants program.

While not every State concurs with the above, a majority of ASIWPCA membership can agree to say with the status quo for the allocation and federal cost share for construction grants in the hope of moving expeditiously to reauthorize the Clean Water Act.

If further information is desirable please feel free to contact me at 202-624-7782.

Most sincerely,

Rabbi J. Savage.

Mr. **DURENBERGER**. Mr. President, some may argue today that this change in allocation is necessary to update the needs assessment. The Senator from Texas made much of this point during committee markup.

Every 2 years, the Environmental Protection Agency goes out and surveys the States to determine their needs for sewer construction funds. This so-called needs assessment simply totals up all the costs of all the proposed projects which are eligible for Federal assistance. It is updated every 2 years. The allocations reported by the committee use data from the 1984 needs assessment which is newer data—more relevant data, I suppose—than the data that was used to craft the formula in 1981.

If all the committee proposed was to adjust the allocations to reflect this new data, and provided that we could agree that the methodology of the 1984 needs assessment made sense, the committee might have a strong case for its proposed changes.

But is it simply an update of the needs assessment which has caused the committee to change the allocations and which has resulted in a large shift of funds from some States to others? No. The allocation is a two-part process. One part raw data called the needs assessment, and a second part which is the underlying mathematical model—the computer, if you will, through which the data in processed.

The committee is proposing fundamental changes not only in the raw data, but to that underlying model as well. There were no tiers in the old formula. There were no logarithms in the old formula. There was no need under the old formula to guarantee five very medium, very average States 1¼ percent of the national pie. Whatever the actual need as measured by the EPA study, it is those changes to the underlying model—expecially the overallocation of dollars to tiers II and III—and not an update of the needs assessment which is causing the great shift of fortunes among the States.

The alternative formulas that will be considered later today will also use the 1984 needs assessment. So we owe the committee no deference for the reason that its data is now better than it had been or is better than ours.

Well, what justification does the committee give for its proposed changes in the formula? There is only one short statement issued by the committee that could in any sense be called a justification. It appears on page 57 of the committee report and I read it to the Senate:

> Those States with very small remaining needs were identified. These are the States which need somewhat more than an allotment strictly on their share of needs, in order to have a manageable program of sufficient size to make meaningful investments in sewage treatment facilities. Also, especially for those among these States whose share would be dropping substantially because of changes in needs and allotment formulas, a larger share is needed to assure program momentum and avoid disruption.

The committee goes on to say:

> In allotment formulas adopted by the Congress in the past, these purposes have been served by a flat minimum allotment per State of one-half of one percent. This is somewhat arbitrary, and diverts a larger share of the total to smaller States than would result from their raw needs. Because the number of such States is growing, as the construction grants program nears its objectives, a mechanism was sought for assuring adequate program size for smaller States. This approach is more reflective of needs and less arbitrary than the minimum allocation approach.

That's the committee's justification for the changes that it proposes in the allocation formula, Mr. President.

That would be an interesting statement if it were true. But it's not. The committee says, and again I quote that section:

> This approach is more reflective of needs and less arbitrary than the minimum allocation approach.

That's a falsehood, Mr. President. That's the committee's sole justification of its proposed change in the allocation formula. And it is not a true statement.

The committee creates three tiers of States under its formula. The tier of smallest States—tier III—contains 13 States. All have less than one-half of 1 percent of the acutal national need. In total, those 13 States would get 3.7 percent of the pot, if the allocation were done solely on the basis of actual needs as measured by the EPA needs assessment survey.

If, on the other hand, we used the guaranteed one-half of 1 percent minimum in current law, those 13 States would get 6.5 percent of the national total.

Is the committee assignment more reflective of actual need than the current formula as is claimed by the committee report? No. The committee assigns those 13 States 8.5 percent of the total available for construction grants. The minimum of 6.5 percent as guaranteed by current law was not enough for the committee, which includes members from 8 of the 13 States in tier III. They went for even more. They had to have 8.5 percent of the total. More than double their percentage of the actual national needs.

On top of that, the committee formula creates a second tier of eight States which also get an arbitrary guarantee of grant dollars over and above the allocation they would receive on a needs basis.

So, Mr. President, the single reason the committee offers to explain the fundamental changes in the formula that it proposes turns out not even to be true. And we certainly owe the committee no deference for statements that aren't supported by the facts.

Why is the Committee on Environment and Public Works of the U.S. Senate proposing a change in the Construction Grants Program—changes that according the to the Government of Canada violate international treaties and agreements designed to protect the water quality of the Great Lakes?

There is only one answer to that question. Politics. Pure and simple politics. The sole intent of the changes that the committee is proposing is to put more dollars into the hands of the smaller States that are overrepresented on the Environment and Public Works Committee than they get under the current formula. I have read the committee report, I have searched the record, I have discussed the matter with the members of the committee. I have looked closely to see if there is some good reason for this formula and always the bottom line is the same. They always end up saying, "Well, look how much more I'm going to get."

There is no doubt that the committee has spent a great deal of time designing this formula. It is complex in its detail, beyond the understanding of most Members of the Senate. The staff of the committee proudly boasts that it spent 4 months putting this formula together. Thirty-two States are better off than under current law, just enough to assure the 60 votes needed for cloture. In addition to 13 members of the Environment Committee, the majority leader and the majority whip benefit from the changes proposed, always a help in getting a bill scheduled on the Senate floor.

So it is a carefully designed formula, but designed with only one purpose in mind, that purpose was not to improve water quality, the purpose was not to protect important national resources like the Great Lakes, that purpose was not to meet United States obligations under international treaties and agreements, we are not asked to correct a flaw in the formula, or restructure the program, or save money, or match grant dollars to needs as assessed in the most recent survey, or prevent disruption in the programs of some little States.

We are asked by the committee to make these changes for the sole purpose of satisfying the desire of the members of the committee for more dollars for their States. And the Senate has no obligation to defer to the formula politics of this committee or any other.

Mr. President, I think it would be helpful if at this point in the discussion we had a simple explanation of the workings of the committee formula. I shall endeavor now to provide the Senate with a step-by-step explanation of the mathematical model that the committee has designed.

It all begins with a needs assessment performed by the Environmental Protection Agency. As I said earlier this assessment is done every 2 years and the results are sent to the Congress in a report.

Essentially, EPA hires contractors which go to each State and work with the State's pollution control agency to determine how many dollars of planned sewage treatment construction grants are eligible for Federal funding.

Until 1981 there were seven categories eligible for Federal grant dollars. Those seven categories were: secondary treatment, advanced treatment, infiltration/inflow, replacement and rehabilitation, new collector sewers, new interceptor sewers, and combined sewer overflow. As part of the 1981 amendments three of those categories eligible for funding were dropped. Sewer rehabilitation, new collector sewers, and combined sewer overflow are no longer fully eligible for Federal funds. That has worked to the disadvantage of some States. Those States which are growing very rapidly, like Texas and Florida and which have a need for new systems can no longer count on their planned collector sewers. And States in the Northeast and Midwest which have large combined sewer overflow problems and a need to rehabilitate existing systems don't get to count those needs, either. Governors have the option to use up to 20 percent of their funds for projects in these three categories. But since they are no longer fully eligible for Federal dollars, needs in these three categories are not counted in the new committee formula.

So we start with the raw State needs—as determined by EPA—for secondary and advanced sewage treatment, for the correction of sewer infiltration problems and for new interceptor sewers.

The next step in the committee formula is to divide the States into three tiers based on their share of these needs. Tier III is a group of the 13 States with the smallest needs. They each have less than one half of one percent of the national need as measured by EPA. These 13 States are: Alaska, Nebraska, Hawaii, Rhode Island, Idaho, New Mexico, Nevada, Vermont, South Dakota, Delaware, Montana, Wyoming and North Dakota.

The second tier—tier II—is a group of eight States and the District of Columbia which have between one-half of 1 percent and 1 percent of the national need as measured by the EPA survey. These States are: Utah, Kansas, Oklahoma, Oregon, Arkansas, Colorado and Maine.

The final tier—tier I—includes the 30 States with the greatest need. They each have 1 percent or more of the national needs in the four categories fully eligible for Federal funding.

The next step in the process of designing the committee formula is to allocate the $2.4 billion authorization among the various tiers. It is at this point that all the trouble arises. Rather than give each tier of States dollars according to its needs, the committee chose to greatly over-allocate dollars to the smaller States.

The 13 States in tier III have altogether only 3.7 percent of the total national needs. But the committee chose to give these 13 States 8.5 percent of the national dollars, more than twice the amount they should have gotten.

The next step in the process of designing the committee formula is to allocate the $2.4 billion authorization among the various tiers. It is at this point that all the trouble arises. Rather than give each tier of States dollars according to its needs, the committee chose to greatly over-allocate

dollars to the smaller States.

The 13 States in tier III have altogether only 3.7 percent of the total national needs. But the committee chose to give these 13 States 8.5 percent of the national dollars, more than twice the amount they should have gotten.

The eight States and the District of Columbia in tier II have among them a total of 6 percent of the fully eligible national needs. But the committee chose to give tier II 9 percent of the national dollars—50 percent more than they should have gotten according to the EPA survey.

Since tier II and tier III were given more dollars than their measured needs justified, that can only mean that the 30 States in tier I were shortchanged. In fact, those 30 States have 90.3 percent of the national need but are allocated only 82.5 percent of the dollars for construction grants authorized by this legislation.

Now, in percentages that under-allocation may not seem like much to Senators. But the 7.8 percent of funds shifted out of tier I amounts to approximately $187.2 million or on the average a loss of $6 million in construction grants to each State in tier I. That's a sizable loss when considered from the prespective of the many small communities which have been waiting for construction grant dollars for years.

The final step in the committee allocation process is the division of dollars among States within each tier. It is at this point that the logarithms and the logarithms cubed enter the picture. The committee also provided a gurantee of not less than 1.25 percent to each State in tier I and modified the allocation for several tier I States to assure that they would receive not less than 80 percent of the dollars they receive under current law. Although each of these suballocations further distort the needs as measured by EPA, the distortions in this step are only minor compared to the fundamental decision by the committee to over-allocate $187 million to the 20 States with the smallest needs.

Let me share with the Senate some the very great distortions that result from the committee's formula. On yesterday afternoon, the Senator from Michigan, Senator LEVIN, presented several comparisons of a similar kind. I have prepared a table which I ask unanimous consent be printed at this point in the RECORD which shows the per capita—that is per person—allotment for each State under the committee's formula. It ranges from a low of $5.83 per capita for California to $8.69 per capita for Minnesota to $30.45 per capita for Vermont, $32.12 per capita for New Hampshire, and $44.56 per capita for Alaska.

Another comparison. On a per capita basis Ohio—a tier I State—and Vermont—a tier III State—have very similar needs. Ohio has a per capita need of $245.80 while the Vermont need is $250 per capita. Nevertheless, Vermont gets an allotment of $30.45 per capita under the committee formula while Ohio gets only $10.05. Vermont gets 3 times the dollars per capita as Ohio, while their actual needs are equivalent.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

Per capita allotments

	Amount
Alabama	$7.59
Alaska	44.56
Arizona	10.87
Arkansas	12.11
California	5.83
Colorado	8.59
Connecticut	9.51
Delaware	23.08
D.C.	33.98
Florida	10.95
Georgia	6.30
Hawaii	18.22
Idaho	18.21
Illinois	7.63
Indiana	8.46
Iowa	10.04
Kansas	12.34
Kentucky	15.05
Louisiana	8.08
Maine	20.55
Maryland	11.06
Massachusetts	14.91
Michigan	8.95
Minnesota	8.69
Mississippi	11.72
Missouri	12.22
Montana	16.27
Nebraska	11.25
Nevada	20.11
New Hampshire	32.12
New Jersey	15.69
New Mexico	12.37
New York	12.18
North Carolina	6.49
North Dakota	16.89
Ohio	10.05
Oklahoma	9.55
Oregon	10.59
Pennsylvania	6.44
Rhode Island	18.54
South Carolina	10.15
South Dakota	21.93
Tennessee	8.59
Texas	8.95
Utah	20.20
Vermont	30.45
Virginia	7.38
Washington	16.40
West Virginia	15.42
Wisconsin	6.96
Wyoming	27.01

Mr. DURENBERGER. Mr. President, the widest—almost unbelievable—disparity is between Texas and Wyoming. Texas has a raw need in the four eligible categories of $239 per capita. Wyoming's need per capita is less than half of that at $110 per capita. But Wyoming out does Texas in grant dollars by a factor of 3. Texas is at $8.95 and Wyoming is at $27.01. Combining the disparity in needs with the reverse disparity in grants, Texas suffers a sixfold discrimination simply because it is a big tier I State. I do not know how a Senator from Texas can stand that kind of discrimination when the committee substantive justification for the formula it proposes.

Mr. President, Senator MOYNIHAN and I will be offering an amendment which modifies the committee formula. The nature of the modification we make is easy to explain. We simply take the 7.8 percent of the authorization—the $187 million—that was overallocated to tier II and tier III States by the committee and give it back to the 30 States in tier I. With these dollars we are able to increase the tier I hold harmless to 90 percent. The remainder of the dollars are assigned to the other tier I States according to their percentage of the national need. The chart which results from these minor alternations in the committee's mathematics is the substance of the amendment and it has been widely circulated.

Mr. President, I ask unanimous consent that a table comparing the Durenberger-Moynihan amendment with the formula in S. 1128 be printed at this point in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

	Funding share		Share of year 2000 eligible needs	Funding (dollars in thousands)	
	Committee formula	Proposed amendment		Committee formula	Proposed amendment
Alabama	0.012500	0.013211	0.013162	$29,550	$31,231
Alaska	007563	003271	004964	17,879	7,733
Arizona	012500	013041	011131	29,550	30,829
Arkansas	011714	007893	008190	27,692	18,659
California	058321	065611	068122	137,870	155,104
Colorado	010503	007077	006525	24,828	16,730
Connecticut	012500	013226	013350	29,550	31,266
Delaware	005801	002509	001354	13,713	5,931
District of Columbia	009172	006180	005039	21,683	14,610
Florida	045181	048260	053700	106,808	114,087
Georgia	014570	015563	017317	34,443	36,791
Hawaii	007440	003217	004531	17,587	7,605
Idaho	007272	003145	004005	17,190	7,435
Illinois	036881	041491	027339	87,186	98,085
Indiana	019653	22109	011996	46,459	52,266
Iowa	012672	013536	015061	29,955	31,999
Kansas	012337	008312	009006	29,163	19,650
Kentucky	015044	016069	017881	35,565	37,987
Louisiana	014380	015359	017092	33,994	36,309
Maine	009772	006584	005670	23,101	15,565
Maryland	019722	022188	020871	46,623	52,452
Massachusetts	036195	038662	043020	85,565	91,397
Michigan	035063	039446	041460	82,889	93,250
Minnesota	014988	016862	016490	35,431	39,862
Mississippi	012500	013010	010755	29,550	30,756
Missouri	025422	027154	030216	60,098	64,192
Montana	005411	002340	001015	12,790	5,532
Nebraska	007467	003229	004625	17,652	7,633
Nevada	006805	002943	002839	16,087	6,957
New Hampshire	012500	012983	010435	29,550	30,692
New Jersey	048867	052197	058081	115,521	123,394
New Mexico	006814	002947	002859	16,108	6,967
New York	090478	101787	091512	213,890	240,624
North Carolina	016168	017269	019216	38,220	40,824
North Dakota	004658	002014	000583	11,011	4,761
Ohio	045906	051645	049902	108,522	122,089
Oklahoma	012223	008235	008837	28,895	19,468
Oregon	011794	007946	008217	27,881	18,784
Pennsylvania	032302	036339	036477	76,360	85,905
Rhode Island	007428	003212	004494	17,560	7,593
South Carolina	013399	014312	015926	31,675	33,834
South Dakota	006400	002768	002106	15,129	6,544
Tennessee	016674	017810	019818	39,417	42,103
Texas	053882	057553	064042	127,376	136,055
Utah	12486	008413	009232	29,515	19,888
Vermont	006581	002846	002407	15,558	6,728
Virginia	016689	018775	017186	39,452	44,384
Washington	028665	030618	034070	67,764	72,381
West Virginia	.012712	014381	011545	30,051	33,997
Wisconsin	022322	024801	026531	52,768	58,630
Wyoming	005359	002318	000978	12,669	5,480
Samoa	000732	000761	000620	1,730	1,799
Guam	000567	000601	000620	1,340	1,421
Mariana Islands	000533	000565	000583	1,259	1,336
Puerto Rico	012640	013502	015023	29,880	31,919
Trust Territory	001409	001494	001542	3,331	3,532
Virgin Islands	000464	000492	000500	1,096	1,163

Mr. DURENBERGER. It is unfortunate that these changes greatly disadvantage some small States as compared to the one-half of 1 percent guarantee they were given under current law. Many of us involved in this debate would have been happier had the committee never opened this topic for discussion. We recognize a need for a minimum allocation to the smallest States. But the committee chose to drop the concept of a minimum.

We could have lived with current law. We did not create the tiers or the logarithms or the hold-harmless requirements in the design of the committee formula. We are simply insisting that the allocation between those tiers and within the structure of the committee formula be fair in its fundamentals, that each of the three tiers be given a basic allocation according to its need.

Mr. President, all of this mathematical complexity has taken me far from the note I started on when I opened this little talk. That subject was the impact of this formula on the water quality of the Great Lakes States.

To return to that topic let me read from testimony given by Mr. Rober Sugarman before the Committee on Governmental Affairs recently. Mr. Sugarman is the immediate past co-chairman of the International Joint Commission which is charged with implementing the Boundary Waters Treaty between the United States and Canada. He was the U.S. representative on the IJC.

The occasion of the hearing was consideration of the legislation sponsored by the Senator from Wisconsin to provide funds for water quality research on the Great Lakes. Senator KASTEN will be offering a portion of his bill as an amendment to this legislation today.

Let me now read from Mr. Sugarman's testimony:

> As a former co-chairman of the International Joint Commission of the United States and Canada, I had the opportunity to become familiar with the progress and problems of the United States and Canada in addressing the ongoing pollution problems in the Great Lakes.
>
> During the 1970s, dramatic progress was made in reducing phosphorous inputs into the Lakes, which were clearly identified as the primary source of eutrophication. This has led to substantial improvement in the

Great Lakes Ecosystem and for its useability for recreation and fishing.

However, it became recognized, during the 1970s, that the effort that was then being made would not be sufficient, and the International Joint Commission, after several years of study, reported to the governments of the United States and Canada that additional efforts in the order of 10,000 or more tons per year of phosphorous reduction would be required in order to retrieve the eutrophication and eliminate the eutrophication problem in the Lakes.

In 1981, therefore, the IJC recommended that substantial additional reductions be accomplished by such methods as alternative forms of sewage treatment such as land application, which achieved substantial better results, and by additional add-on treatment at conventional sewage treatment plants.

Secondly, at the same time, during the 1970s, the toxic problems emerged as a serious potential disaster for the Lakes. Senator Kasten has already referred to the scope and delineation of the problem. I would only add that I concur completely with the judgment that we run the risk of losing the Great Lakes as a public resource if we do not address that problem.

Instead of adequately addressing that problem, we have allowed it to become worse by continuing the inputs of toxics into the Lakes where, of course, they build up because the Lakes have long retention periods and are not adequately treating either industrial or municipal wastes to remove toxics.

What I would like to bring to the committee's attention is that these needs of the Great Lakes are not merely a matter of public policy and desirable objectives, but represent an international obligation on the part of the United States.

Pursuant to Article 4 of the Boundary Waters Treaty of 1909, neither country (that is Canada or the United States) may pollute the boundary water to the injury of health or property in the other state. While difficulties abound in drawing cause and effect relationships between toxics and phosphorous inputs on the one hand and cross-boundary impacts on the other, it is clear that such effects have been and are and will continue to occur and, indeed, will become more serious and severe if not properly addressed.

While the treaty itself does not define appropriate levels of pollution, and indeed, implies that the only appropriate response is the elimination of the pollution, the two countries, by executive agreement, have designed a structure for coordinating programs to reduce pollution of the Lakes. This executive agreement, the Great Lakes Water Quality Agreement of 1978, draws its legal standing from the Boundary Waters Treaty and domestically within the United States from the executive powers of the agency such as EPA to adopt regulations as necessary to implement their programs.

However, because of the proliferation of pollutants in the Lakes and the inadequate treatment that has been afforded to them, the United States is simply failing to adhere to the similar mandate of the 1909 Boundary Water Treaty, and more specifically, is failing to meet its obligation of the 1978 Water Quality Agreement which implements that treaty.

This includes the United States' undertaking to monitor, to achieve phosphorous reduction and to make toxics substantially absent from the lakes, all of which are requirements of the 1978 agreement.

Examination of the achievements to date and examination of the results of surveillance and monitoring on the Lakes make it clear that the level of funding in the committee formula simply will not achieve United States compliance with its international obligations.

I conclude that an increase, not a decrease, in funding is required to maintain adequate progress towards meeting our international commitment.

I know from my experience that the people of the Great Lakes Basin, both in the United States and Canada, will derive extremely significant benefits from proper management of the Great Lakes.

In addition, the United States will be in a position of meeting its international obligations under the treaty and the 1978 Water Quality Agreement.

Mr. President, I might also read into the RECORD at this point a letter from the eight Governors of the Great Lakes States which is dated June 7, 1985:

> We are writing in strong opposition to the recent action by the Environment and Public Works Committee to alter the Wastewater Treatment Grant allocation formula contained in the Clean Water Act reauthorization. The Committee's proposed formula cuts $175 million in essential grant funds from the Great Lakes Region in 1986 alone.
>
> The water of the Great Lakes not only provide 1 in 10 Americans with drinking water, but also represent an international resource. The Great Lakes Water Quality Agreement of 1978 between the United States and Canada recognizes our joint responsibility for proper stewardship of this water resource.
>
> Through a combined effort with Canada, water quality in the Great Lakes basin has improved significantly. Today's wastewater treatment facilities form the centerpiece of that effort. Fulfillment of these reforms relies significantly upon federal responsibilities for wastewater treatment standards and construction as outlined in the Water Quality Agreement.
>
> The Committee's proposed formula jeopardizes this vital resource. The proposed formula change will not affect the federal deficit. Rather, it is an attempt to reallocate funds which would sorely strain the federal commitment and support for the Great Lakes watershed and exacerbate the imbalance on the return of the federal tax dollar to this region of the country. We oppose this proposed formula in the strongest possible terms.

Mr. President, in conclusion let me say again there is no mystery about what is happening here today. Small States have been finding ways to use their equal representation in the Senate to advantage since the Connecticut compromise was offered at the Constitutional Convention. I do not know that the Founding Fathers would have understood the logarithm of interceptor sewer needs cubed any better than we do. But they would not be surprised to see Rhode Island, Vermont, and Maine ganging up on New York at a proceeding like this one.

However, Mr. President, there is more at stake here than the politics of allocation formulas. This formula is political. But it is also pernicious. It threatens a National Treasure. And breakes a solemn promise to our northern neighbor.

The Great Lakes are the heart of our continent. Over the last 200 years they have been the focal point for development of two great nations. They have been the source of food and drinking water. Today 26 million Americans drink water from the Great Lakes. They are a mode of transportation. They are a reservoir of power and a vast resource for recreation and wildlife; 63 million Americans visit a park on the shores of the lakes each year.

All of these demands have taken their toll. The water quality of the lakes has declined sharply. Unfortunately, the natural unity of the lakes has been overlaid by a fragmentation of State and local governments that have been unable to organize people to protect what nature has provided.

In 1972 and again in 1978, the United States and Canada signed Great Lakes water quality agreements. These agreements require the United States and Canada to provide adequate wastewater treatment facilities for the sewered population on both sides of the border. Canada has met this requirement for 99 percent of its population. At last count, the United States was less than two-thirds of the way there. And as part of the agreement, the Government of the United States committed to provide financial assistance to the local governments on the U.S. side to assure that this agreement was fulfilled at the earliest possible date.

In one sense, the questions we face today is the same question we face so often. How are we going to fix that formula so the folks back home get more next year than they got last year? That debate has been a constant fact of life for 200 years in this institution. But occasionally we are called on to look out beyond the borders of our individual States to our responsibilities as Senators for the whole Nation. Such an occasion occurs this morning.

The Great Lakes are not a Minnesota resource or a New York resource. They are not just mine, PAT MOYNIHAN'S, AL D'AMATO'S, or CARL LEVIN'S. They are a national resource. They are yours as much as mine. Each of us has the same responsibility for protection. The committee's formula will most assuredly have a negative impact in the water quality of the Great Lakes. And it will break our promise to Canada made by treaty in 1909 and confirmed in agreements over the last decade.

Mr. President, I did not complete the story of the lamprey eel at the beginning of this statement. The ending is upbeat by the standards of the debate we have been conducting today.

The Great Lakes States took steps to combat the lamprey infestation. First, electric fences were built across streams to prevent the lampreys from moving upstream to spawn. Later a more effective control method by chemical treatment of spawning beds was discovered.

As a result this lowest of all vetebrates is no longer a major predator on the Upper Great Lakes. The lakes are being restocked with lake trout and new species—the coho salmon has been introduced with great success.

I only wish I could be as hopeful about the outcome of the process we are going through here today. The committee at my urging and that of others of our colleagues is now offering a new formula as an amendment to S. 1128. It restores some of the funds that were taken from the Great Lakes States. I will support the committee amendment as the most that was possible under these circumstances. But I do not think it is necessarily right. And I will continue to make every effort in this Chamber to make sure that we as a Nation fulfill our commitment to protect the water quality of the Great Lakes.

Mr. President, I would draw the attention of the Senate to a part of this amendment that limits the life of this new formula and to the colloquy between the Senator from Michigan and the managers of the bill. The point is that the compromise we have stuck here this afternoon does not extend beyond 1990, that a new formula will be required at that time and that the compromise at 85 percent held harmless with three tiers shall not be considered a precedent for designing a new formula for the revolving fund grants in the coming decade.

Thank you, Mr. President.

Mr. President, I shall conclude briefly. I thank my colleague from Rhode Island for the characterization of my amendment. He may well be correct. When it came up for a vote in the Environment and Public Works Committee, we had 2 votes and the other side had 13. It is quite possible that that gap would have existed on the floor; I do not think so. The point is when you get into the numbers game, as I trust our colleague from Missouri will soon illustrate for us because he has done this so well on so many occasions over the last 6½ years, it is very, very difficult to play winners and losers on the floor of the Senate.

Over the last 24 hours, however, those of us who do not necessarily represent large States but represent States that have in them or adjacent to them some of the Nation's most treasured water resources such as the Great Lakes and the Chesapeake, have been carrying on a dialog with those members of the Environment and Public Works Committee who constructed this new three-tiered logarithmic approach to responding to the Nation's needs for sewage treatment. We came to the conclusion about noon today—and I must mention my colleagues, Senator MOYNIHAN and Senator D'AMATO of New York, Senator CRANSTON of California, and especially Senator LEVIN from Michigan, who is not on the committee but became enraged the very first time he saw the committee formula and went to work on his own on the issue. I thank them for the effort that they put in on trying to negotiate with the committee what hopefully moves in the direction of some greater sense of national priority and national reality.

I would say on behalf of the 13 votes on the committee, despite the fact that a casual look at their own States would show them benefiting, I think it is difficult for my colleagues on the committee to try to deal with a limited amount of dollars for a very large problem. I think Senator BENTSEN has reflected this in his concern for his State, Senator CHAFEE has done the same thing with regard to Rhode Island.

The cutback in this program several years ago made it extremely difficult to do a good job of prioritizing these needs. So I say to my colleagues who may be in a majority on this issue that I do believe they are trying to do the best with the few rather precious Federal dollars committed to this problem. In that spirit, I have withdrawn my intention to offer an amendment with my colleague from New York which would get us closer to equity on behalf of national resources such as the Great Lakes. I have done so for several reasons, one because the change which the committee agreed to in hold harmless moves in the direction that it ought to move.

I have done so also on the commitment of the committee to engage in a colloquy with my colleague from Michigan on the matter of future precedent and also on the commitment of the committee to clarify language which is currently report language accompanying the bill relative to the application of their proposed new formula to the State grants program.

With that, I recommend to my colleagues that they join with the Senator from Rhode Island and the Senator from Maine, who obviously also has done a great deal to try to work something out here that can be supported by a majority of us, to join them in the amendment which is before us now of which I am a cosponsor.

Mr. MOYNIHAN. Mr. President, I rise in support of the committee amendment modifying the sewage treatment grant allocation formula. Yesterday I discussed a number of objections to the formula approved on May 14, by the Environment and Public Works Committee. That formula would have shortchanged large, urban States, many of which are in the Northeast and Midwest. It would have drastically reduced Federal funding of sewage treatment in the Great Lakes and Chesapeake Bay basins, threatening to retard progress in cleaning up these major water resources.

I am pleased that my colleagues on the Environment and Public Works—Senators STAFFORD, BENTSEN, CHAFEE, and MITCHELL—discussed these concerns with Senator DURENBERGER Senator D'AMATO and me. Today's proposal would reduce the unfair losses in funding our States would have had. It does not go as far as we would have liked, but it is a compromise that will enable us to proceed with the Clean Water Act Amendments of 1985, a vital piece of legislation.

This bill is especially important to my State of New York, because New York's need for sewage treatment grants is greater than the need of any other State. According to the 1984 EPA needs survey, it will cost $53 billion nationwide to construct the sewage treatment plants and other basic facilities necessary to achieve the goals of the Clean Water Act. Over 9 percent of this need—almost $5 billion—is in one State, New York. Additional funds will be needed to correct combined sewer overflows, a major cause of water quality degradation in old cities, where stormwater and sewage are conveyed by the same conduits.

It is obvious that Federal construction grants cannot come close to meeting these needs. It is therefore important that scarce Federal funds be allocated among the States is an equitable manner. As a Nation's population grows and shifts from region to region, it is inevitable that the needs of particular States will change with time. Expanding cities in Florida, Texas, Arizona, and other growing areas will need to accommodate the waste generated by new residents and industry. However, all regions of the United States have pressing needs.

The committee amendment would, in comparison to the reported bill, increase the shares of those States that would have suffered large losses. New York's annual share of the grants would rise from $214 to $228 million per year. The amendment would take effect for fiscal years 1986 through 1988, resulting in an overall increase for New York of $44 million. These extra dollars will ultimately help to improve water quality in the Hudson

River, Lakes Erie and Ontario, and many smaller rivers and lakes throughout the State. In 1989 and 1990, New York's share will drop to $214 million. However, Congress will have to study this issue again in 5 years and, in determining a formula for the years after 1990, take into account changes in population and other factors affecting the needs.

This is a relatively modest increase that will fall short of my State's needs. Yet the amendment is a significant improvement, and I hope the Senate will approve it, along with the entire bill.

Mr. President, in the briefest terms, I would like to join in supporting the concept so far. I like particularly the fact that the chairman of the committee presided over the rather lengthy negotiations that brought forth once again a measure of comity and I think unanimity in the committee which we value. May I make a particular point, when we ask ourselves about the particular allocations of this resource, that it is very much to the credit of the Senator from Rhode Island and the Senator from Maine that there is a resource to allocate. It was proposed that this program cease. This bill authorizes $18 billion over the next 9 years and it marks a continued commitment of our committee and, we trust, this body to the Clean Water Act.

AMENDMENT NO. 343

(Purpose: To fund wastewater treatment grants on the basis of need)

Mr. DANFORTH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Missouri [Mr. DANFORTH] for himself and Mr. GRASSLEY proposes an amendment numbered 343.

On page 1, line 9, strike all through the figure after "Virgin Islands" on page 2 and insert:

Alabama	0.013162
Alaska	.004964
Arizona	.011131
Arkansas	.008104
California	.068122
Colorado	.006525
Connecticut	.013350
Delaware	.001354
District of Columbia	.005039
Florida	.053700
Georgia	.017317
Hawaii	.004531
Idaho	.004005
Illinois	.027339
Indiana	.011996
Iowa	.015061
Kansas	.009006
Kentucky	.017881
Louisiana	.017092
Maine	.005678
Maryland	.020871
Massachusetts	.043020
Michigan	.041460
Minnesota	.016490
Mississippi	.010755
Missouri	.030216
Montana	.001015
Nebraska	.004625
Nevada	.002839
New Hampshire	.010435
New Jersey	.058081
New Mexico	.002859
New York	.091512
North Carolina	.019216
North Dakota	.000583
Ohio	.049902
Oklahoma	.008837
Oregon	.008217
Pennsylvania	.036477
Rhode Island	.004494
South Carolina	.015926
South Dakota	.002106
Tennessee	.019818
Texas	.064042
Utah	.009232
Vermont	.002407
Virginia	.017186
Washington	.034070
West Virginia	.011545
Wisconsin	.026531
Wyoming	.000978
Samoa	.000620
Guam	.000620
Mariana Islands	.000583
Puerto Rico	.015023
Trust Territory	.001542
Virgin Islands	.000500

Mr. DANFORTH. Mr. President, this amendment is offered on behalf of myself and Senator GRASSLEY, and it substitutes a different allocation formula from the one which has now been put forth as the so-called compromise proposal. The allocation formula that Senator GRASSLEY and I have suggested in this amendment is the 1984 EPA need survey.

Now, Mr. President, the Environmental Protection Agency conducts a need survey, which survey is supposed to provide the basis for a determination as to how the funds under this program are to be allocated. That is my understanding of the reason for having the need survey. The reason for having the need survey is not to provide employment for people who are going to sit around and do useless work but, rather, to provide some rational basis for Congress to make a determination as to how to allocate the funds.

I read from the statement that was made yesterday on the floor of the Senate by the Senator from Rhode Island. He described the EPA need survey in the following words:

> This survey, conducted by the Environmental Protection Agency, with the cooperation of the States, is the most current, complete, and accurate determination available of the needs for publicly owned treatment works which can be assisted under titles II and VI of the Act.

Now, Mr. President, the theory of this amendment is very simple. If the need survey is in fact the most current, complete, and accurate determination available of the needs for publicly owned treatment works which can be assisted under titles II and VI of the act, why not follow the survey? Why have the survey in the first place if we are not going to follow it?

Now, that is somewhat of a rhetorical question, and I am about to provide the answer to the question. The reason for not following the survey provided by the experts, the reason for not following the most current, complete, and accurate determination available is politics. The reason is, Mr. President, that a majority of the members of the Environment and Public Works Committee are not benefited by the Environmental Protection Agency's need survey, so they had to doctor the figures. And then when some Senators began to get exercised about the doctoring of the figures, they tried to moderate their position, at least somewhat, in order to provide some cover from a brouhaha on the floor of the Senate.

Now, Mr. President, it is well known by anybody who has been in the Senate any length of time at all that the one way to start a fight on the floor of the Senate is to have some States trying to rip off other States, and that is precisely what has happened here—some States trying to rip off other States for their own benefits by doctoring the needs formula which, according to the Senator from Rhode Island, is the most current, complete, and accurate determination available of the needs for publicly owned treatment works.

Now, Mr. President, let us look at the States represented on the Environment and Public Works Committee and find out how they fared in this bill under the so-called compromise that is now before us. Let us learn how they fared compared to the EPA need survey.

Beginning with Vermont, Vermont would receive 245 percent of the figure that the need survey suggests—two-and-a-half times roughly for Vermont what the experts say that Vermont should receive; Rhode Island, 168 percent of the need survey; Wyoming, also represented on the committee, 589 percent of the EPA need survey amount—not 3, 4, or 5 times what the EPA survey suggests; South Dakota, 281 percent; Idaho, 148 percent; New Hampshire, 119 percent; New Mexico, 211 percent; North Dakota, 920 percent of the EPA need survey; Colorado, 149 percent, New York, 105 percent; Maine, 166 percent; Montana, 540 percent. Only three States represented on that committee do worse than the need survey, and they are Minnesota, Texas, and New Jersey.

Now, Mr. President, the amount involved in this I suppose is not a whole lot. If my State of Missouri received what it is entitled to according to the EPA's analysis, it would receive $72 million. It is going to receive $60 million. That is not a whole lot by congressional standards but it certainly is a whole lot in the eyes of the communities that are going to be affected. The Missouri Department of Natural Resources has done an analysis as to what would happen on the basis of this formula. What would happen is that two-thirds of a page single-spaced of projects in Missouri would be dropped altogether—Alma, MO, Ashland, Camdenton, Kansas City, Kennett, Macon, Marceline, Odessa, St. Louis, Saint Peters, Sarcoxie, Stotts City, to name a few, dropped, dropped, clean water projects, sewage treatment projects in those communities dropped altogether. Why dropped? Because Missouri was not represented on the Environmental and Public Works Committee where this pie was cut up.

Mr. President, we in the Congress of the United States have been in the process of trying to deal with a budget deficit. We have been fighting this battle now ever since the first of the year. We have had dramatic votes here on the floor of the Senate, late one night when Senator WILSON was wheeled into the back of the door with IV's in his hand. And now the battle rages on and on in the conference committee. We have cast tough votes in the Senate. We will have to cast tough votes in the future in order to get the deficit under control. It is possible to do it, Mr. President. It is possible to bite the bullet, as we say. It is possible to do that, to cast the tough votes over and over again, provided there is a sense of equity in what we are doing, provided there is a sense of fairness in what we are doing, provided the burden of budget cutting is spread evenly. But at a time when we are making tough decisions, it is unconscionable to change allocation formulas to sweeten the pot for some States that happen to be represented on the Environment and Public Works Committee at the expense of other States. That is unconscionable. It is unconscionable to say to the people of Arcadia, MO, or Carl Junction, Doniphan, or Ellington, it is unconscionable to say to them, "I'm sorry, but you can't have your project. You can't have your project because somehow we have got to scrounge up enough money to pay North Dakota 920 percent of its EPA needs,0 or to pay Wyoming 589 percent of its EPA needs, or to pay Colorado 149 percent of its EPA needs.

"Oh, I'm sorry, you can't have the sewage treatment project. We don't care about you. Your State is not represented on this committee."

It is not fair, and it is not right.

Over the next 5 years, the State of Missouri will not receive $358 million, which is the appropriate level it should receive under the EPA needs survey. No, it will receive $300 million—of the target by $58 million. How many more communities are going to be affected over the next 3 years?

Mr. President, that is the issue I put before the Senate. We are departing from current law. Current law does not follow the EPA survey. But if we are going to depart from current law, let us do it in the direction of fairness, not unfairness. Let us do so in the direction of equity, not inequity. Let us meet needs on the basis of informed technical analysis, not political needs.

Mr. CHAFEE. Mr. President, as always, the distinguished Senator from Missouri gave a very fine speech.

I remind him that the formula which we have adopted here is not unique. I think just about every formula we see go through this body has a floor, a 1½-percent minimum for the smaller States. If he wants to suggest changing that, so be it, and I presume that his amendment does away with any safeguard for the smaller States.

Why do you have a floor for the smaller States? You have a floor because you have to have some kind of program; and if you get these amounts down too small, the capabilities of having a decent program and an effective one are vastly reduced.

If we were really to meet the needs, we would bust the budget. We stuck with the $2.4 billion ceiling that was agreed to in 1981 when we had this program. We had all kinds of pressures, and in the House they go above that. Originally, they went way above it. I think they are some half billion dollars above the $2.4 billion. But we decided to stick with that.

Trying to keep various States happy under any kind of formula, as we all know, is extremely difficult. We revised this, and I see that Missouri picked up some more dollars as a result of that—not great, but something.

The key thing, it seems to us on the committee, is to have a bill. That is what we have been told by the representatives who deal with the Clean Water Act in Missouri—have a bill.

The amounts that are changed around in this because of the caps and the growth, because of the caps on the decline—in other words, the maximum cut of 20 percent—the dislocations are not that great for any State.

Missouri was not affected that dramatically—about an 11-percent decline, I would say. Other States had a decline of about 20 percent.

These vast percentage increases over the needs of some of the smaller States have been pointed out. That is true. However, at the same time, we are not talking about a great deal of money.

For example, North Dakota was cited. North Dakota's difference between being perhaps under some needs test and what they would have received is about $6 million or $7 million. So we are not talking about the dramatic dollars that might be suggested in some of the larger States.

Mr. President, we have to be realists around here. Should we change the formula and attempt to take into account some of the changes that have occurred?

The Senator from Missouri quoted from my remarks yesterday about the needs survey. We have attempted to accommodate that needs survey, taking into account both the one-half percent minimum and the safe harbor of the 15-percent maximum cut. Whether that is the best formula or not, I do not know. It is the best we could work out. In dealing with these things, we are dealing with 100 Senators, all of whom are vigilant, as is the Senator from Missouri, in protecting the interests of their States.

I believe we have arrived at a good formula. If the Senator has a better one, let us hear it. But I do not think he has.

Therefore, Mr. President, I urge support for the formula as sent forward by this committee.

Mr. MITCHELL. Mr. President, I think a few general points should be made about the formula, and then a specific point about the very strong statement made by the Senator from Missouri.

He tells us that we have an EPA needs formula and we ought to follow that to the letter. Not to do so, he says, is unconscionable. Not once unconscionable, not twice or thrice unconscionable, but several times unconscionable. He points to individual members of the Senate Committee on Environment and Public Works as evidence of that unconscionableness by saying, "Look, they're getting more under this formula that they would have gotten if we followed the needs survey to the letter."

As the Senator knows, this program is 13 years old. There have been several needs surveys and there have been several formulas, and not once in those 13 years has the formula precisely followed the needs survey—for good reasons, which I will point out in a moment.

The most recent formula, in 1981, did not do so. It produced the circumstance which the Senator has here described over and over again as unconscionable because some States got more money under that formula than they would have received had the needs survey been followed to the letter. Yet, in 1981 we did not hear from the Senator from Missouri how unconscionable that formula was. We did not hear how unfair it was. We did not near how bad it was that some

States received more than the needs formula. We heard only—silence.

And why was there silence from the Senator from Missouri about the 1981 formula? There was silence because under the 1981 formula the State of Missouri got more money than it would have gotten had we followed the needs survey to the letter.

Was that unconscionable? And if it was, why was that point not made on the floor of the Senate in 1981? And was it unconscionable for the State of Missouri to accept millions of dollars over the past 4 years over and above what they would have gotten under the needs survey while other States, with their long list of towns comparable to but not identical to Arcadia, MO, and all of the others, could not get their money under the formula?

The fact of the matter is, as I said earlier, that the needs survey is a starting point for the allocation of funds under this program and always has been. It has never been used without deviation for valid reason.

And this year we are not using the needs survey exclusively but rather as a starting point for several reasons.

The first is that in order to have a meaningful continuing program the committee and Congress have recognized that there has to be a relative degree of continuity in each State's program, that it would be truly unconscionable to have a precipitous decline in the program of any one State especially when we all recognize that the national needs are far greater than the resources available to meet them.

And so we have adopted this time, as we have in previous years, a method of modifying the reduction for those States whose circumstances change as reflected in the needs survey, a so-called hold-harmless formula, that says no matter what the needs survey identifies, no State will lose more than 15 percent of its previous allocation. So no State will encounter the prospect of at some future time seeing their program completely dissipated.

Was there objection previously to that? I did not hear it.

Does it make sense? I believe so. So do the members of the committee. So has a majority of this Senate and the House of Representatives in every year since we have taken this program up 13 years ago.

If the Senator suggests that we should abandon that concept and pursue strictly the needs survey, then he is saying to some States you cannot count on a viable program in the future because you might encounter a 50- or 60-percent decline. That is the first change we made.

A second point recognized in this formula as in virtually every other allocation formula distributing large amounts of Federal funds is that there must be a minimum level of funding for some States to operate a program at all and that some of the very smaller States require a floor of some kind; otherwise, they simply cannot have a manageable program. Some States could not even fund a single project in their State if we followed the needs survey exclusively.

So every time we have adopted a formula, it has included a floor of some kind, and so this formula does that. It says notwithstanding the needs survey, we are going to make certain that every State can have a clean water program, and so we are going to provide some minimum level of funding for the smaller States. That is a leveling effect, just as the hold harmless is, which prevents the larger States from suffering a precipitous decline.

We introduced this year a third leveling effect, again to try to have some continuity in the program, and that was that any of the smaller States, the so-called tiers 2 or 3 States which make up 20 of the 50 States that experience an increase in their allotment, could not under any circumstances have an increase greater than 20 percent over their last allocation. That, again, was to try to prevent wide swings in the program.

So what it says is that if you go down under the needs formula we are going to modify the decline by saying you will not go down over 15 percent; if you go up under the needs formula, we are going to modify the increase so you do not go up over 20 percent, to try to make the funds available to accomplish the formula.

Now are those unconscionable motives? Are those ignoble motives? They are open. They are public. There is nothing secret about them. They have been followed by Congress for 13 years in implementing this program.

But what happens is that when the result turns out unfavorably for some not getting as much money as they like, they come in and impugn the motives of those who are getting more and that would be fine if there were consistency in that. If we had heard protestations in 1981 about the unfairness of that formula, it might ring a little more true today. But we did not and they do not.

This is not a perfect formula. The Senator says politics is involved. Indeed it is. This is a political institution. This is a very complicated difficult area trying to deal with an enormous national need which far exceeds the ability of our resources to meet them with a fixed sum of money, $2.4 billion. I personally favored more. I was opposed to the administration policy of reducing it. But that is the level that we have.

So we struggled weeks to come up with a formula that reflected as best we could with all of our failings and imperfections, some reasonable degree of fairness, equity, and maintain continuity in the program.

This is what we have come up with. You will not hear from me any suggestion this is perfect. It is far from that.

But I will say this: If the needs survey represents the illusion of perfection, it is not, because this was compiled by human beings with just the same weaknesses and fallibilities that the people here have, and if we were to adopt the policy of applying this needs survey without the application of any judgment of our own, then what we are saying is we are not going to continue this program in several States, we are going to permit wide variations, with the tremendous disruption of the program. Missouri will not get quite as much as it will have, but it will still be able to continue the program. If we just went to the needs survey, some States would have no program. I do not think that we should do that.

I think we have a reasonable compromise under all of the circumstances imperfect, but one that advances as best we can the objective of the act which, after all, is what the one thing we can all agree on that we really do want to clean up our Nation's waters, to continue the tremendous effort that has been made and to reflect the overwhelming commitment of the American people to clean water. We do not want to slip back. We want to move forward.

This committee compromise amendment offers the best opportunity to do that, and I urge the Members of the Senate to oppose the amendment of the Senator from Missouri.

Mr. LEVIN. Mr. President, yesterday I came to the floor, as the Senator from Missouri came to the floor today, extremely unhappy with the committee allocation which provided tiers to give to smaller States, about 20 of them, disproportionate benefits under this bill. The committee not only had tier III, which is the traditional guarantee of one-half of 1 percent, as my friend from Rhode Island said, but the committee also created a new tier called tier II, which guaranteed the folks between one-half and 1 percent of the national need that they would also have a minimum floor under their particular allocation.

Under the original committee formula, in tier III, there were 13 States, representing 3.7 percent of the national needs as determined by the EPA but guaranteed 8.5 percent of the authorization. In tier II, there were 7 States representing about 6.1 percent of the national needs determined by the EPA but allocated 9 percent of the authorization for reasons which my friends from Rhode Island and Maine have indicated.

I am, frankly, just as unhappy and continue to be just as unhappy about this kind of special treatment for smaller States in this body as my friend from Missouri is.

We fought hard yesterday on the motion to proceed. We did something rather unusual. We not only came and protested, as the formula should be protested, but went beyond that and debated at length the motion to proceed to signal to our friends who benefit disproportionately that we are so unhappy with this arbitrary positioning of the smaller States that we intended to debate this at length. Senator DURENBERGER and Senator MOYNIHAN indicated that their amendment would be forthcoming if we got to the bill and we counted votes. We not only looked at the equities, which are critical, but we also counted votes. At least my count was that we had no chance of prevailing on what we viewed to be a clearly equitable position, which would have avoided the new creation of a second tier of smaller States and doing something which we had never done before that I know of—creating a floor for the people who are at one-half of 1 percent to 1 percent of the national need, but guaranteeing them in excess of their EPA assessed needs.

In counting the votes, we decided that we did not have them and so we decided to negotiate with the floor managers of the bill and the chairman of the committee to see if we could not move toward a fairer allocation. We have moved toward a fairer allocation. We have moved about $195 million closer to a fairer allocation, so that the tier I States gain, in the committee amendment which has been proposed now, $195 million, which is taken away from the tier II and tier III States.

My friend from Rhode Island has said that to do this some States will decline precipitously in what they get. I think what he means, and he would acknowledge what he means, is that they decline precipitously from the tremendous increases in the committee bill, not current law. And, in fact, there are a number of States which lose from their current position under the committee proposal. Not much in many cases; somewhat in other cases.

Most of us that benefit from this new proposal benefit very moderately. About all you can say about the committee proposal as it is now being offered is that those of us which were disproportionately hurt under the committee proposal are hurt somewhat less under the version which is now on the floor.

So the proposal now being offered is better than what the committee originally offered, from our perspective. Whether or not we are right that we did not have the votes to carry a Durenberger-Moynihan proposal, we will know fairly soon when there is a vote on the amendment of my friend from Missouri.

I totally share the concerns that he has expressed about the superpositioning of smaller States in this body and on this bill. I am also very much worried about the precedent which might be set by this particular bill.

I have told my friends, the floor managers and the chairman of the committee, that I would like to ask them about that point. Would they agree that it is not intended that this formula as offered, or if amended, it is not intended to create a precedent for, other bills or for later formulas under this particular act?

Mr. CHAFEE. I can speak with no equivocation that if the amended proposal of the Senator from Missouri were adopted, that would set no precedent whatsoever for us. I can also assure my good friend from Michigan that this formula that we have suggested here, the so-called compromise formula, is not going to set any precedent for the future.

First of all, when we get to the next round, it may well be there will be a whole group of different Senators dealing with this matter, so we cannot lock them in in any way. Second, there will be a new needs survey before us at that time. Third, we are not sure what amounts of the funds we will have.

Of course, the funds would not be affected by the percentages in the formula the percentages would not be affected by the total amounts. But I can assure my colleague that, no, this sets no precedent that is in stone for the future.

Mr. LEVIN. I realize, of course, as we all do, that we cannot bind future Congresses. That is not my question. We know different Senators will vote on other formulas in other bills and indeed on later formulas in this bill. I am talking about the percentages, not the needs formula, but the percentages which are allocated. My question is, basically, will you, both the floor managers and the chairman, will you be citing this formula, however we end up amending it, as precedent for other bills or for later formulas under this act?

Mr. STAFFORD. I can respond to my good friend from Michigan, if he will yield for that purpose, by saying, speaking personally and as the present chairman of the committee, I would not be using this as a precedent for other laws or consider it any precedent in any future changes or proposed changes in the formula under this program.

Mr. LEVIN. I thank my friend. I am wondering if I could also ask my friend from Maine whether or not he would also indicate that it is not his intention to argue this formula as a precedent for other bills or for later formulas under this act.

Mr. MITCHELL. Mr. President, as the Senator understands from the exchange we have had in the last few days, the precise mechanics of the formula are intended to represent certain principles that we attempted to establish. I believe in those principles and will, of course, be pursuing them at any future time. But it is not my intention to suggest at any time that, because we have adopted this formula now, it somehow is a precedent for future action.

Now I want to say that if, 5 years from now, I or anyone else concludes, after looking at the needs and looking at the principles, that this or some other formula is the best way to proceed, we can do that on the basis of the merits at that time. I do not want to foreclose myself from ever again supporting this formula.

But my concern is with the principles. So I think I can assure the Senator that any attempt to apply a formula, this or others, at any future time should be based upon the circumstances at that time and not upon the fact that this was used at a previous time.

Mr. LEVIN. I thank my friends for those assurances. Again, I wanted to indicate that at great length we have battled on this issue because of the reasons set forth by my friend from Missouri. I happen to share his beliefs in terms of the superpositioning of the smaller States under this bill. It is because I share those beliefs, and a number of others of us share those beliefs, that we did yesterday debate at great length the motion to proceed.

Because of that we negotiated an improvement. We know it is an improvement over the committee bill. If the basis for that negotiation is correct—we did not think we had the votes on the Durenberger-Moynihan approach—we will find soon enough whether that basis was correct, and we can then move to what is an improvement over the committee position as a result of the amendment which has just been offered. I want to thank my friends from Maine, Rhode Island, and Vermont, the chairman of the committee, for their cooperation in trying to meet some of the needs which have been expressed on this floor, and to achieve a fair version of this when it first came to the floor.

Mr. RIEGLE addressed the Chair.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The senior Senator from Washington.

Mr. GORTON. Mr. President, I rise in support of the compromise amendment which would establish a new allotment formula for distributing construction grant funds and State revolving fund capitalization grants among States for the fiscal years 1986 through 1990.

I am particularly pleased to note that, under the revised allotment formula contained in the compromise, the State of Washington would receive almost $68 million. That would be a $25 million increase over the construction grant funds received by Washington State in the current fiscal year, the second largest increase of any State.

The allotment formula is based fairly on each State's needs for sewage treatment facilities, as expressed in the 1984 needs survey, with only minor modifications. This survey, conducted by the Environmental Protection Agency, accurately determined the needs for publicy owned treatment works in the State of Washington. And the needs are staggering.

Within the last year, over 25 publicly owned treatment facilities located on Puget Sound in Washington State received orders to proceed with implementing secondary treatment at a cost of over $750 million. The State of Washington is firmly committed to implementing secondary treatment as expiditiously as possible, and the allotment formula contained in the compromise will go along way toward assisting the State in reaching this goal.

I am delighted with the work of the distinguished floor leaders on this subject, and with the justice of the revised formula.

Mr. RIEGLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. Mr. President, I think the main difference between the Senate and the House is proportional representation. In the House, there is a Member of Congress for roughly every 525,000 people in the country. So in the aggregate of 435 Members, you get a composite view and voting strength expressed for the country that reflects that proportional representation. Here in the Senate we have quite a different aggregate. We have two Senators from each State without regard to population, and so the aggregate strength of the large population States is much, much less here in the Senate by the very engineering design of the institution.

So we often find that even though a majority of the national population may be in a small number of States that are affected a certain way by national formula, the greater voting strength of a larger number of smaller States with their same two Senate votes as the larger States enables them to have a bearing on the outcome of composite decisions in a way that increases their strength very markedly. It is just a fact of the way this body is put together. So it does limit, I think, the ability for needs assessments, however they are done, to necessarily be agreed to on the basis of how they actually fall by population, density, or even for that matter by the size of States or regions.

Having said that, I very much appreciate the good-faith effort that went on yesterday and today in attempting to negotiate a compromise on this difficult issue. I think we have made some progress. When a formula is under discussion here in the Senate, we all feel obligated to protect the interests of our own States. But as I and my colleague from Michigan have pointed out, we also have a responsibility to take a broader look at what is fair, what is just on a coast-to-coast basis, and what in the end constitutes sound national policy.

I also think we have to give very particular consideration to the impact of these kinds of decisions on unique and irreplaceable natural resources, such as the Great Lakes, which constitute over 95 percent of the surface fresh water resources of our country. While the compromise that has been worked out over the last 2 days marks a gain for Michigan and the other Great Lakes States, as I think it properly should when related to need, I have to also say that I am disappointed because the compromise that has been developed today does not go even further in putting our resources where they are really needed. In that sense, I have some sympathy for the amendment, and the initiative of the Senator from Missouri. That amendment would on the face of it be more beneficial to my State. But I think it comes at a time and in a form where it does not promise a successful way forward for us.

I think the best we are able to do with what we have achieved over the 2 days from where we started is about all that can be accomplished here unless we are able to accomplish more in the Senate-House conference, which I would be delighted to see.

So while I appreciate and would like to see the Senate in a position to approve the formula arrangement that would produce the results the Senator from Missouri is asking for insofar as it would affect my State, I do not think it is in the cards for the reason that I have described. I do not think it is something that we ought to be diverted by at this particular time, however attractive it may be.

I think it is important that despite whatever reservations any of us have we not delay the Clean Water Act any longer. This legislation is essential for continuing the progress that has been made in improving water quality across the country. We also have an obligation to the people of our country who want strong and effective clean water laws to take action against toxic discharges and to begin to tackle the problem of nonpoint pollution sources, which the bill wisely does. I also strongly support the Great Lakes title in this bill which I discussed at some length yesterday. This section will strengthen efforts to study and protect this important resource.

I commend this initiative. In particular, this provision will take important steps to reduce nutrient loading of lakes and to study whether toxic sediments can successfully be removed from lake bottoms. I am especially pleased that the committee has acknowledged the importance of the Great Lakes to our country, and has been willing to help us bring attention to their problems by including this provision in the bill.

In conclusion, although I still have reservations about the formula for the construction grants program, and hope that the committee will continue to take our concerns into consideration, I am prepared to support this legislation this afternoon. I believe the debate yesterday and today, the work over the past 2 days, made important improvements in the bill.

I yield the floor, Mr. President.

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Mr. President, I have been carefully listening to the debate trying my best in a sense of understanding and desiring to see the best in the other side's argument, and to understand exactly what that argument is. As I understand the argument that was put forth by the Senator from Maine, it is that maybe the system is unfair, but life is unfair. It has always been unfair. There is a precedent of unfairness, and the precedent of unfairness creates an inertia of unfairness, and that inertia cannot be changed. Furthermore, there are small States, as I understand both the Senator from Rhode Island and the Senator from Maine, that could not operate on the basis of the EPA formula. Therefore, we cannot cut back to the EPA formula and keep programs going in those States.

Sitting here listening to those arguments, I wonder why do we have an EPA. Why do we have a survey of need? Why waste the time if the decision is going to be political? I do not know. Maybe when we are analyzing how to cut waste out of Government, we could consider cutting out a whole part of an agency making the study which is going to be summarily ignored by the Congress of the United States. I will not suggest that. I would suggest following the recommendations of professionals, of those who have made the environmental analysis. If you ask them what to do and they tell you what to do, do it. Do not ignore it.

But the issue is raised, and the point is made by the Senator from Rhode Island and the Senator from Maine that, well, you have to have a kind of critical mass—it is my understanding of the argument—in the program for the small States, and that is why you have to doctor the formula.

Mr. President, if that argument is correct—if sewage treatment needs are not measured by population are not measured by need, but are measured solely by the geographical boundaries of States, and if in fact that is the argument for doctoring the EPA formula—then that is an argument for continuing the status quo of the doctored formula, not doctoring it yet further.

That is an argument for current law, not for this bill.

If current law, going back, as the Senator from Maine has argued, for 12 years or so has never provided that the EPA formula is followed, then that is an argument for continuing the same doctrine that we have now, but sweetening the pot yet further.

The so-called compromise that is before the Senate now is not a continuation of the status quo. It is not the principle of inertia built up in presently existing unfairness.

Rather, it is a further change of the formula, and it turns out that the further change of the formula benefits the States of 12 members of the Environment and Public Works Committee and disadvantages the States of 3 members of the Environment and Public Works Committee.

Mr. President, we are dealing with a frozen program. The money spent under this program is frozen. It is not going to be increased. The pie is the same. What the committee is proposing in this so-called compromise is not an expanded pie but the same pie, and they want to recut it. They want to recut the pie, not to maintain the status quo, as unfair as it may be, on some theory that geographical boundaries should be the basis rather than where people live and where plants are, and so on.

Their theory is small States have to have this critical mass, but that is an argument for the law as it now exists, not for the law as it has been changed.

Mr. President, the Senator from Rhode Island said if I had a better idea I should propose it. I do have a better idea and I proposed it.

The better idea is the EPA survey. Does the EPA survey make more sense than the formula that has been used by the committee?

Let me read a part of the formula that is used by the committee and ask what sense it is. This is from the speech of the Senator from Rhode Island yesterday.

> The allotment among States in this second group is based on the cube of the logarithm of the actual needs of a State as a fraction of the sum of the cubes of the logarithms of the actual needs of all the States in that group.

Senator Levin asked, is this going to be a model for the future?

The Senator from Maine said that he agrees in principle with this. As a matter of principle, he agrees, that the allocation formula should be based on the cube of the logarithm of the actual needs of a State as a fraction of the sum of the cubes of the logarithm of the actual needs of States in that group.

That is a new principle.

No; it is not. It is not new. It is an old principle. It is the principle of winning votes, winning votes by concocting some bizarre Rube Goldberg formula in order to come up with figures in order to please a majority of the members of the committee and then a majority of the Members of the Senate. And that is what they have done.

I repeat, it is inequitable and it is unconscionable.

Senator Mitchell asked why did I not complain in the past. In the immortal words of Russell Long, I am against any combine of which I am not a member.

Mr. President, I think Senator Riegle made a very good point. The clean water bill has to be passed, as unfair as the formula is, and it is grossly unfair. Delay is not to the advantage of anybody.

One thing about these allocation formulas is when they have finally done the job, as broad as they are, as inequitable as they are, they are done in a way which has a majority of the Members of the Senate behind them. So I have no doubt at all that if this were put to a rollcall vote, I would lose. And even if people stumbled in here and not knowing what they were doing voted for my allocation formula rather than the committee's, I am not a member of the conference. I am sure Senator Stafford, Senator Chafee, and Senator Mitchell are members of the conference. So I have no illusion about the future of my proposal as a legislative strategy.

Therefore, Mr. President, I am willing to submit this to the Senate for a voice vote.

CLEAN WATER ACT SEWER GRANTS

Mrs. HAWKINS. Mr. President, I would like to express my appreciation to the Public Works Committee for their revision of the sewer grant allocation formula. Existing law was terribly unfair to Florida and other high-growth States—we only received 64 percent of the funds needed to meet our share of the national need, while States with declining populations received up to 850 percent of their actual need.

The committee has revised that formula significantly. Although there is still inequity, Florida will now receive funds for 84 percent of our needs. This represents an increase, including the increase provided under the compromise formula, of $25,517,539 annually. There is a tremendous backlog of sewage projects in Florida, and this will add tremendously to our ability to deal with the situation.

Florida is the fastest growing State in the Nation. Over 20,000 people a month are moving into Florida. This is straining our ability to provide utilities to the breaking point. We desperately need help in meeting these needs.

The Census Bureau recently reported that Florida had 6 of the 11 fastest growing metropolitan areas in the country. Ocala's population increased 27 percent in the past 4 years, a gain of over 22,000 people; Fort Myers has grown 23 percent, or 58,000 people; Naples has grown 29 percent, or 32,000 people; Melbourne has grown 21 percent, or nearly 70,000 people; Fort Pierce is up 26 percent, or 49,000 people; and West Palm Beach has grown 20 percent, an increase of more than 138,000 people.

And again, this is in just the last 4 years. All of these areas, and most of the rest of the State, was largely rural only 10 to 15 years ago. Many areas, including growth areas, are still installing septic tanks to accommodate the growth.

Florida still does not get its fair share of the funds. And while I understand the political and practical imperatives that prevent an overnight shift from the archaic present funding formula into one that fairly reflects the Nation's current needs, I want to serve notice that I fully intend to be here in 1990 seeking a needs-based funding formula.

Mr. BENTSEN. Mr. President, I would like to discuss several concerns regarding the pretreatment program in the Clean Water Act with the manager of the bill. It is my understanding that one of the purposes of the pretreatment provisions of the act is to require pretreatment of industrial waste discharges to a POTW in order to prevent the discharge of wastes which would adversely affect the treatment processes or the pass-through of specific waste products which the treatment processes are not designed to remove.

Mr. CHAFEE. The Senator from Texas is correct. You have accurately described one of the primary purposes of this section of the Clean Water Act. Because industrial wastewater is mixed with large volumes of domestic sewage in typical municipal POTW's, general pretreatment requirements are included in the act to assure that industrial discharges into POTW's are treated prior to dilution by the domestic sewage.

Mr. BENTSEN. It is my understanding that privately owned industrial wastewater treatment facilities that directly discharge to a receiving body instead of through a POTW are not subject to categorical pretreatment requirements. Instead, the national pollutant discharge elimination system permitting process is designed to protect our waterways by imposing BAT discharge limits on these direct discharge industrial plants to specifically regulate their pollutants. These privately owned plants must be designed and operated to meet their permit requirement, but the owner of the plant determines what mix of treatment requirements it needs to meet the permit. Such a requirement could result in the construction of expensive, yet redundant, physical facilities with no attendant benefit to the environment.

Mr. CHAFEE. The Senator is correct; pretreatment is not required for privately owned, direct discharge industrial wastewater treatment plants. It is the permitting process and effluent limitation guidelines that controls these dischargers.

Mr. BENTSEN. In Texas we have regional industrial wastewater treatment plants which treat the industrial wastewaters they receive and are regulated by industrial-type permits. These facilities only treat the industrial and attendant nonindustrial wastewater from indirect discharges; however, they are owned by a public authority. Despite the fact that they only receive attendant nonindustrial sewage from the plants that discharge into their system, they are considered POTW's. Because of the uniqueness of the industrial wastewater treatment system I have described, would the Senator agree that EPA should consider them in a different context than a typical municipal POTW which may perhaps require different action consistent with what it would require from privately owned facility?

Mr. CHAFEE. The Senator from Texas makes a good point. EPA should use discretion in its application of pretreatment requirements, particularly removal credits, to the very limited number of POTW's which solely serve industrial dischargers.

EPA has available the option of creating a subcategory to address these relatively unique operations and could explore that option in this type of case.

CONSTRUCTION GRANT FORMULA

Mr. MATHIAS. Mr. President, the construction grant program of the Clean Water Act, since its enactment in 1972, has made a significant contribution to controlling the volume and pollutant levels of wastewater entering our Nation's streams, rivers, lakes, and estuaries. Pollutants discharged by municipal wastewater treatment plants built by this program are estimated to have decreased 46 percent since 1972.

A total of $42.7 billion has been appropriated under the Clean Water Act since its inception for constructing and upgrading plants and improving the treatment of wastewater flowing through them; in correcting leaking sewer pipes; constructing new interceptor sewers to connect to treatment plants; rehabilitating old main sewer systems; correcting combined sewer overflows; and constructing collector sewers to serve new growth.

This is a large number, but then, so is the current need—estimated to be $108 billion. Of that amount, $40.6 billion is eligible for Federal funding under the construction grant program.

Now it doesn't take a mathematical genius to figure out that the current $40.6 billion need will be barely touched by this authorization of $2.4 billion for construction grants, the same level of funding as the past 4 years. Even when the significant shift in cost-sharing to the States, which now carry 45 percent of the cost of these projects, is taken into account, it is clear that we have a long way to go as a nation in meeting our goal of "fishable, swimmable" waters.

In my own State of Maryland, for example, the Governor has recommended to the legislature a total of $263 million in cost-sharing for the next 6 fiscal years to complement the Federal share. And yet the committee formula for the next 5 fiscal years—which is all that is authorized—assuming the maximum appropriation, would provide only $185.6 million to Maryland. That's $50.4 million less than Maryland's commitment and 1 year less of funding. So the States are doing their share in this concerted effort to assure that our Nation's waters are clean enough in which to swim and fish.

Our Nation's waters are cleaner and more protected from pollution thanks to this landmark environmental legislation.

Significantly, the American public supports this expenditure and they support strict adherence to clean water and clean air standards in order to assure a safe environment. A November 1983 Louis Harris Associates poll found that 91 percent of Americans wanted the Clean Water Act maintained or strengthened and 70 percent even expressed a willingness to pay an additional $100 per capita to ensure that the water quality of our Nation's waters is maintained. Mr. Harris, in testifying before the Senate Subcommittee on Environmental Pollution, also reported his findings that

74 percent of Americans believe that curbing water pollution is as important as generating economic growth.

So the weight of public opinion clearly is on the side of reauthorizing a Clean Water Act with continuing strong water quality goals and standards and with programs to meet our Nation's most serious water pollution problems. Accordingly, I commend the Committee on Environment and Public Works for bringing this reauthorization before the full Senate.

I do take exception, however, to the proposed formula for allocation of construction grant moneys. I am one who believes as the proverbial New England farmer said, "If it ain't broke, don't fix it."

The committee has not provided us with an explanation of what is wrong with the construction grant formula in current law. As far as I have been able to determine, the committee bowed to pressure from certain States with relatively small needs in order to give them more than their "fair share." In addition, the committee has devised a class system of States and invented a new term of art—the "tier." Those States which, under current law, are assured a certain minimum level of funding through a "hold harmless" provision are divided into tier II and tier III. The remaining 38 States with more than 90 percent of the total aggregate need are now called tier I.

Pursuant to the 1984 EPA needs assessment, the tier II and tier III States have a total of 9.6 percent of the construction grant needs. Yet the Durenberger/Chafee formulation before us would provide them with more than that needs percentage. The remaining States have 90.3 percent of the need, but a number of them would receive less than their needs percentage. This is neither fair nor representative of wise public policy from a clean water standpoint.

The problem of deteriorating water quality is a national one and will continue to be so for the foreseeable future. Watersheds know no State boundaries and the vast majority of our water quality problems are of an interstate, regional nature.

It is only because the needs are so great, and the program to meet those needs so small in comparison, that we find ourselves groveling over the Federal share each State will receive. It is only because the needs are so great, and the program to meet those needs so small in comparison, that we have to resort to hold harmless provisions and logarithms in funding formulas.

There is a need to continue the Federal commitment to the States cooperating in the EPA Chesapeake Bay Program. This program is recognised nationally as a model of intergovernmental cooperation in attacking water pollution problems of an interstate watershed.

The States of Pennsylvania, Maryland, and Virginia, and the District of Columbia have worked diligently to develop appropriate pollution abatement measures for both point and nonpoint source pollution that is degrading the water quality of Chesapeake Bay. These measures are intended to go hand-in-hand with the construction grant program. A reduction in such funds because of a change in the distribution formula at this critical juncture would abrogate the Federal commitment to the bay program, which the President himself has lauded in his State of the Union Address. EPA Administrators in this and previous administrations have recognized the value of the bay program's scientific data and the emerging strategies of the States to meet identified problems. A sharp reduction in funds would threaten to undo the delicate interstate agreement and working relationships between and among the bay States.

I believe the construction grant formula should provide for a fair distribution directly related to needs, imposing an element of shared sacrifice for all of the States, while moving us as a nation toward our national clean water goals.

Mr. GRASSLEY. Mr. President, I rise as the cosponsor of the amendment offered by Senator DANFORTH to replace the allocation formula in this bill with one that is fair and equitable. All my colleagues are aware that the allocation formula created by the Environment and Public Works Committee is skewed to benefit the States represented on that committee, at the expense of those not so fortunate. This amendment, however, changes the formula to reflect the most accurate and complete measure available to evaluate the wastewater treatment needs of States—the 1984 EPA needs survey.

I agree with my colleague from Missouri that this needs survey provides a more rational basis for Congress to make a determination on how to use these funds, rather than the political, parochial efforts of the committee. It would not result in the gross inequities created by the committee formula where States receive up to five times their estimated percentage of national needs. It would put Federal funds where the funds are needed. Where Iowa's needs, for instance, would represent 0.015061 percent of the national need. Iowa's percentage of total funding would be the same.

Mr. President, I am greatly disappointed by the committee formula which is so blatantly constructed to benefit small States and which shortchanges many States with greater needs. The State of Iowa itself loses $3 million through this formula. Yet if this amendment were adopted funds would be allocated on true need, not politics, and Iowa would experience a $3 million increase.

But more importantly, we would be using fairness as our basis for allocating funds and not a cleverly crafted plan to benefit a majority of States in both the committee and on the Senate floor. In these days of limited resources, we must not fall prey to unconscionable tinkering with numbers to benefit select States over others. I recognize that the formula that Senator DANFORTH and I offer doesn't benefit as many States as that offered by the committee, and I am sure that my colleagues will vote their pocketbooks rather than for a plan that treats all States equitably and fairly. I do urge them, however to support this more responsible alternative formula for allocating funds under the Clean Water Act.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 343) was rejected.

Mr. GRASSLEY. Mr. President, I would like to bring to the attention of the committee and my colleagues an unusual situation with respect to the Des Moines metropolitan area wastewater treatment project.

For the past 13 years, the city of Des Moines and 11 other local jurisdictions have moved forward on the planning and preliminary work for an area-wide sewage project. These communities comprise the only metropolitan area in the State of Iowa required to conform to the requirements of a section 208 planning study. During this study period, the jurisdictions have spent over $30 million and the overall project cost has doubled. We now have a project that is the State of Iowa's highest pollution priority, but one that is so large that it would completely disrupt any funding for the State's other 200 cities with over $500 million in needs. Additionally, the State of Iowa has imposed a cap on State funds which will contribute to an estimated extension of the project completion to 14 years.

Mr. CHAFEE. May I interrupt my colleague from Iowa to say that I am aware of the Des Moines area wastewater treatment project situation and the strain that this costly project puts on other communities in the State seeking to comply with clean water standards.

Mr. GRASSLEY. The House of Representatives has included in its Clean Water Act reauthorization bill a direct authorization not to exceed $85 million for construction of the central sewage treatment plant component of the Des Moines metropolitan area project. I recognize that the Senate's reauthorization bill includes no categorical authorizations for specific wastewater treatment projects. I would hope, however, that when this measure goes to conference committee, the Senate will look seriously at the inclusion of this authorization for the Des Moines area in the final bill.

Mr. HARKIN. I would like to associate myself with the comments of my colleagues from Iowa. We want to ensure that the Des Moines metropolitan area sewer project stays on schedule without affecting funding for other Iowa communities building wastewater treatment facilities to meet EPA standards. With this authorization, we could complete this project in 9 years rather than 14 years and continue to provide funding for other State needs. Delaying this project due to lack of funding will not only add additional cost to this project, but will also increase to an unreasonable level the user rates for residential sewer charges. It is my hope, as well, that the Senate will consider our request for maintaining this House provision in the final version of a clean water reauthorization bill.

Mr. CHAFEE. I thank the two Senators from Iowa for bringing this matter to the attention of this body. I assure you that the Senate conferees will take a close look at the Des Moines area sewer project and will give its authorization every consideration.

Mr. GRASSLEY. I thank the chairman for his consideration.

Mr. HARKIN. I also want to thank the distinguished committee chairman.

Mr. CHAFEE. Mr. President, if there is no further debate on the compromise formula as proposed by the committee, I ask for its adoption by a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 342) was agreed to.

Mr. CHAFEE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STAFFORD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEVIN. Mr. President, yesterday on the Senate floor I argued that fairness was not present in the construction grant formula in S. 1128 as reported by the Environment and Public Works Committee.

It was my feeling that, in a very arbitrary manner, States with large needs received too little and States with small needs received too much under the committee formula.

The amendment which we are now considering is fairer than the committee bill. The amendment is fairer because it caps the arbitrary increase for small States at 20 percent but does not eliminate it. The result is that the larger States still pay for the arbitrary increase but their payment is $195 million less over 3 years because of this amendment.

The committee report states that the allotment formula in this bill is based on each State's needs for sewage treatment facilities as expressed in the 1984 needs survey. But while the committee says that the EPA needs survey is the basis, the bill itself skews the allocation with a number of floors and guarantees that benefit certain States. In particular, the smallest half of our States with 25 percent of our population do better than they should solely because of their size. That is wrong. The other half of the States with 75 percent of our population pay for this inequity. It has crept into many of our formulas because of the fact that the Senate is based on two votes per State. We cannot totally correct the arbitrary nature of the committee bill in this amendment. We can only partially correct it. The votes do not exist to totally correct it on the Senate floor. This amendment which partially corrects it is the far better alternative to nothing. It is also important that the chairman and the floor managers have assured me that they will not argue the small State formula in this bill as a precedent for other bills or for later formulas under this act. I thank them for working with us to alleviate at least some of the problems that the committee bill originally created. I cannot say I hope the Senate prevails in conference since I obviously hope it will not. But I do say that because of this amendment it is more likely that the conference will reach an equitable solution for all States and that is why I support this amendment.

Mr. President, I want to thank the floor managers of the bill and state the following: I want to thank my friend from Rhode Island, my friend from Maine, and my friend from Vermont for working with us to try to ameliorate some of the problems which we saw in this amendment, and to say that while the Senator from Missouri, as I indicated, I felt had the basic points that I obviously shared, I would have voted against that amendment and would have voted with the compromise of the committee, had that amendment been put to a rollcall vote because I do feel that the compromise of the committee has, in fact, reflected at least to some extent the concerns that many of us have reached. I want to thank the chairman and the floor managers for their work on this bill.

Mr. MITCHELL. Mr. President, if I may, I want to commend the Senator from Michigan for the very diligent and vigorous manner in which he has pursued his points of view, representing very carefully the interests of his constituents, along with the Senator from New York [Mr. MOYNIHAN], the Senator from Minnesota [Mr. DURENBERGER], and the Senator from California [Mr. CRANSTON]. They were vigorous advocates of their position. We are pleased that the matter has been resolved. While it may not be wholly to their satisfaction, I believe it does represent a significant step forward in our goal of cleaning the Nation's waters.

Mr. CHAFEE. Mr. President, we are waiting for the junior Senator from Wyoming.

Mr. STAFFORD. Mr. President, in the interim, I wonder if the able Senator from Rhode Island will yield to me very briefly.

Mr. President, we are getting near the end of the consideration of the Clean Water Act Amendments of 1985. While we are waiting for possibly one additional matter to be disposed of in connection with the legislation, I should like to take this opportunity as chairman of the full committee to express my appreciation to the two members of the committee who have so ably managed the bill on the floor of the Senate and who conducted the hearings that developed the bill with care and distinction. I am grateful to them for all that they have done to bring us successfully to this point. I offer my thanks to Senator CHAFEE and Senator MITCHELL for an extraordinary job, and to members of the staff on both sides of the aisle who have contributed mightily to getting this bill to this point.

Mr. CHAFEE. Mr. President, I express our appreciation to the distinguished chairman of the full committee. Although he was not directly involved with this particular subject, when we arrived at difficulties we all turned to him to mediate, to compromise, to come up with a solution. He inevitably did that with skill and satisfaction to those involved. So we are very, very grateful to the distinguished Senator from Vermont, and also the ranking member of the committee, Senator BENTSEN of Texas, who was always helpful, always available for his advice and did an excellent job.

I also join in thanks to the staffs of both sides for the work they did. Without their deep knowledge of this program, which is incredibly complicated, we could not have arrived at the solution that seems inevitable. We are not home yet, but we are getting there.

Finally, I thank my colleague, the distinguished Senator from Maine, who was so effective in not only resolving some of these problems but advocating them. I once heard somebody say in describing an articulate spokesman that he could "talk a dog off a meat wagon." Well, I feel that Senator MITCHELL of Maine falls in that category. He is very, very persuasive, as we saw in his actions today. I am grateful to him for the constant assistance, constructive suggestions, and strong advocacy which he has given to this bill.

Mr. MITCHELL. I thank the Senator, Mr. President, for his remarks, inelegant as the example may have been. I associate myself with the remarks of the Senator from Vermont and the Senator from Rhode Island regarding the work of the staffs on both sides. I commend the two chairman of the full committee and subcommittee, as well as the ranking member, Senator BENTSEN of Texas, for their outstanding leadership in helping to move this important legislation forward.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. DENTON). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WALLOP. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 344

(Purpose: To exempt pollution subject to the Colorado River Basic Salinity Control Act from the interstate dispute resolution provisions)

Mr. WALLOP. Mr. President, on behalf of myself, Mr. HATCH, Mr. ARMSTRONG, Mr. WILSON, Mr. HART, and Mr. SIMPSON, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Wyoming [Mr. WALLOP], for himself and others, proposes an amendment numbered 344.

Mr. WALLOP. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 60, line 2, after "nor" insert "shall this subsection or section 402(d)(2)(B) or section 402(b)(1)(E) apply".

On page 60, lines 2 and 3, strike out "Colorado River Salinity Control Act of 1974" and insert in lieu thereof "Colorado River Basin Salinity Control Act".

Mr. WALLOP. Mr. President, by this amendment to section 511(e), pollution which is subject to the Colorado River Basin Salinity Control Act of 1974 (Public Law 93-320) is fully exempted from the interstate dispute resolution provisions of the 1985 clean water amendments, section 117 of the bill. Is is a technical amendment.

This exemption is appropriate and necessary because salinity in the Colorado River Basin is being addressed basin-wide through a State/Federal process which the Congress has acknowledged and fostered since passage of the 1974 Salinity Control Act.

Under titles I and II of that act, the United States is proceeding with a number of salinity control projects, which are a part of the Colorado River Water Quality Improvement Program of the Secretary of Interior. The Colorado River Basin salinity control forum, composed of the seven Colorado River Basin States—Wyoming, Utah, Colorado, New Mexico, Arizona, Nevada, and California--meets frequently to discuss and formulate measures to address point and nonpoint sources of salinity. The forum was specifically established as the mechanism for airing and resolving interstate differences regarding salinity control in the Colorado River Basin, should differences arise. In 1978, 1981, and 1984 the forum reviewed and approved Colorado River water quality standards for salinity, including numeric criteria and plans of implementation for salinity control, in conformity with section 303 of the Clean Water Act. The forum works closely with the Secretary of the Interior and EPA administrator. The seven Colorado River Basin States, through their duly established water quality control agencies, have consistently adopted the forum's plans and recommendations, and these have been accepted by EPA over the years.

The 1974 Salinity Control Act, the efforts of the Secretary of Interior and EPA administrator, and the salinity control forum have together formed the model for interstate dispute resolution. Since an explicit mechanism exists to address both point and nonpoint sources of salinity pollution in the Colorado River Basin, this amendment is meant to ratify the cooperative work of the Secretary of the Interior, the EPA administrator, and the forum and to provide a specific exemption from the interstate dispute provisions of the 1985 Clean Water Act amendments, section 117 of the Senate bill, in the interests of continued interstate and State/Federal cooperation in Colorado River Basin salinity control.

Mr. CHAFEE. Mr. President, this amendment by the distinguished Senator from Wyoming has been discussed with the Members of the majority, and we think it is a fine amendment and urge its adoption.

Mr. MITCHELL. Mr. President, we have no objection to the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 344) was agreed to.

Mr. WALLOP. Mr. President, I thank the managers.

I move to reconsider the vote by which the amendment was agreed to.

Mr. CHAFEE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 345

Mr. MATTINGLY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Georgia [Mr. MATTINGLY], for himself, Mr. WALLOP, and Mr. NUNN, proposes an amendment numbered 345.

Mr. MATTINGLY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

At the end of the bill, insert the following:

SEC. (a) Section 402 of the Clean Water Act is amended by adding the following new subsection:

"(m)(1) Following the date of enactment of the Clean Water Act Amendments of 1985 and prior to October 1, 1982, the Administrator or the State (in the case of a State with a permit program approved under section 402 of this Act) shall not require a permit under this section for discharges composed entirely of stormwater, other than (A) those associated with industrial activity or a municipal separate storm sewer, or (B) those for which the Administrator or the State determines that the stormwater discharge violates a water quality standard or is a significant contributor of pollutants to waters of the United States.

(2) Prior to October 1, 1988, the Administrator, in consultation with States with a permit program approved under section 402 of this Act, shall submit to the Congress the report of a study (i) to identify stormwater discharges or classes of stormwater discharges for which permits were not required pursuant to paragraph (1) of this subsection, and (ii) to determine, to the maximum extent practicable, the nature and extent of pollutants in such discharges. Prior to October 1, 1989, the Administrator, in consultation with States with a permit program approved pursuant to section 402 of this Act, shall submit to the Congress the report of a study setting forth procedures and methods to control stormwater discharges to the extent necessary to attain and maintain water quality standards.

Mr. MATTINGLY. Mr. President, I offer this amendment on behalf of myself, Senator WALLOP, and Senator NUNN.

Mr. President, the amendment which I have sent to the desk deals with a subject upon which there is a great deal of agreement. But, as we all know, it is sometimes more difficult to deal in arriving at the precise language which will implement the agreement in principle. That has been the case with this effort, but I am glad to say that we appear to have finally reached that point of agreement. For that I wish to thank the distinguished Chairman of the Subcommittee, Senator CHAFEE, and Chairman STAFFORD of the full Committee. I also commend the other committee members who have helped craft the final wording for this amendment and extend to them my personal thanks.

This amendment deals with how we are going to treat stormwater runoffs which are not in any way contributing to the degradation of water quality standards. Most sensible persons would say that if the runoff is not impairing a water quality designation or significantly contributing to water pollution, then we should not waste time and scarce financial resources requiring these sources to be permitted along with those sources which do contain significant levels of pollutants. Frankly, to do so would seriously threaten our efforts to attain and maintain water quality standards because the regulators would be literally swamped under a mountain of paperwork. They would thus be prevented from focusing their full attentions on those discharge sources which really need regulation and treatment.

The amendment does not exempt from permitting any rainwater or snowfall precipitation which is directly associated with and contaminated by an industrial activity. It applies only to the runoffs which by their very nature do not violate water quality standards or which do not comprise a significant source of pollution to the waters of the United States. It is indeed a giant step forward in the progress of the original intent of the Clean Water Act because it will enhance our ability to deal with the true sources of pollution.

This amendment will be effective through 1992—the time when we must reauthorize again the act. During that time, the amendment mandates that a thorough study be conducted by EPA. In conjunction with the States to more fully determine any of the additional sources which should be controlled and to what extent. In the instances where permits have already been issued to a facility which would be exempted under the conditions of this amendment, such permits will simply not require renewal upon their expiration.

Again, Mr. President, I congratulate the managers of the bill on their expertise and for their efforts to resolve this important issue. I would now ask the Senator from Rhode Island if he is prepared to accept the amendment.

Mr. CHAFEE. Mr. President, I wish to congratulate the Senator from Georgia who has worked diligently on this and been persistent in pressing his amendment.

I do think it is important to note that industrial site includes the plant or plant-associated areas to conform to EPA regulations.

A municipal separate storm sewer does not include combined sewer overflows, which are considered publicly owned treatment works under the Construction Grants Program.

Finally, in determining what is a significant contributor of pollutants, the Administrator need not prove a violation of water quality standards or requirements. In making the determination, he may consider discharges in other permitted categories, the location of such discharges, the quantity and nature of pollutants reaching the water, and other relevant factors. However, he need not show a cause and effect relationship between the storm water discharges and water quality.

We find the amendment of the distinguished Senator from Georgia acceptable and would urge its passage from this side.

Mr. WALLOP. Mr. President, I would like to say that I share the views of my friend and colleague, Senator MATTINGLY, about the potential harm that overregulation can do. Although it is important that EPA do a good job in regulating the Nation's waters, I personally don't think we need a stormwater discharge permit for every parking lot, gas station, store, business, industry or home in America.

That is why I am so concerned about the regulations EPA has recently promulgated. They can be interpreted to require everyone who has a device to divert, gather, or collect stormwater runoff and snowmelt to get a permit from EPA as a point source. That is absurd.

One of the chief purposes of the Clean Water Act is to regulate the discharge of harmful pollutants from industrial processes. However, the act only regulates discharges from "point sources", which are generally defined as "discrete conveyances" such as pipes, or conduits and similar collectors. The act does not, for example, authorize EPA to regulate diffuse storm runoff or snowmelt running across an industrial facility. Nevertheless, EPA's stormwater runoff regulations interprets the term [illegible] source" to include devices which gather, collect, or otherwise divert stormwater runoff or snowmelt. This is overbroad in its reach. As a consequence, facilities that would otherwise have no obligation to treat diffuse stormwater runoff or snowmelt, but which have constructed diversion structure to prevent this runoff from contacting process areas, or from flooding roads or lands, may be required to obtain an NPDES permit requiring them to treat stormwater runoff.

Requiring a permit for these kinds of stormwater runoff conveyence systems would be an administrative nightmare. It would also be prohibitively expensive to administer, not just from an agency's perspective, but from the point of view of compliance, as well. We should be encouraging States to administer NPDES permits, not chase them away.

Although the compromise which has been worked out is not what I would have preferred, nevertheless it is preferrable to going to conference with the only exemption in the bill being for oil and gas field operations. Oil and gas are important industries in my State. However, so is mining, and so are all the mom and pop stores across the Nation who are simply trying to earn an honest living.

I believe an honest effort has been made to work out a fair amendment that will curb needless regulation, and I would like to commend my colleagues from Rhode Island and Georgia for their hard work. It certainly is a step in the right direction.

Mr. FORD. Mr. President, I have not seen this amendment. I am very much interested in it. Would the Senator give me just a few minutes to look at his amendment before we go forward?

Mr. MATTINGLY. Yes.

Mr. FORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I have no objection to the amendment of the Senator from Georgia.

Mr. CHAFEE. Mr. President, I wish to state that this is not intended to affect the validity or enforceability of existing storm water permits.

Mr. President, there being no objection to the Mattingly amendment, I move its adoption.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Georgia [Mr. MATTINGLY].

The amendment (No. 345) was agreed to.

Mr. CHAFEE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MATTINGLY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CHAFEE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

AMENDMENT NO 346

Mr. SIMPSON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON], for himself, Mr. STEVENS, and Mr. MURKOWSKI, proposes an amendment numbered 346.

Mr. SIMPSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 20, lines 5-6, delete "or the Secretary of the Army.".

On page 29, after line 21, insert the following new subsection:

"( ) The Secretary shall prepare and submit a report to the Congress, not later than December 1, 1987, which shall examine and analyze various enforcement mechanisms for use by the Secretary, including an administrative civil penalty mechanism. Such report shall also examine, in consultation with the Comptroller General, the efficacy of the Secretary's existing enforcement authorities, and shall make recommendations for improvements in their operation."

On page 20, line 11, add the following new sentence: "In addition to any other relief provided, whenever on the basis of any information available the Secretary of the Army finds that any person has violated any permit condition or limitation in a permit issued under section 404 of this Act by the Secretary of the Army, the Secretary may, after notice to the State in which the violation occurs, issue an order assessing a civil penalty of not more than $10,000 per day for each violation, up to a maximum administrative penalty of $125,000."

(4) Insert "or the Secretary of the Army" immediately after "Administrator" on page 20, lines 15 and 18, on page 21, lines 1, 13 and 21, on page 22, lines 4, 7 and 9, on page 23, lines 1, 13 and 14, and on page 24, lines 4, 5 and 12.

(5) Insert "or Secretary's" immediately after "Administrator's" on page 20, line 19, on page 22, line 5, and on page 23, lines 19 and 22.

Mr. CHAFEE. Mr. President, I ask unanimous consent that the opening statements of yesterday, at least my opening statement, appear in the permanent RECORD of today immediately after the motion to proceed with S. 1128, the Clean Water Act Amendments of 1985. I do not know who else had opening statements. I know the distinguished minority floor leader had a statement, but he can speak for himself. But for others who had opening statements, I ask unanimous consent that they also be included in the permanent RECORD of today, although they were delivered yesterday.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr MITCHELL. Mr. President, I ask unanimous consent that my statement appear in the permanent RECORD immediately following that of the distinguished manager of the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SIMPSON. Mr. President, I believe we have made substantial progress of the Clean Water Act reauthorization but I do have a remaining concern. That is—I feel the bill as reported by the committee is overreaching with regard to enforcement of the section 404 program.

The committee bill would specify that EPA has authority to enforce section 404 of the act, even though this is a Corps of Engineers Program. There is simply no precedent for this dual authority.

The Justice Department released a letter yesterday, voicing opposition to this language. It simply makes no sense from the standpoint of orderly enforcement of a permit program. It is unreasonable to have duplicate enforcement authority regarding permit violations and I trust this will become ever more obvious to all Members of Congress.

The Department of Justice has taken exception to the language as well, and the White House has problems with the language.

I do not want to be obstructive, but it would seem that the language could be fixed by the deletion and inclusion of a few words.

I would point out—for the clarification of other Senators and staff—that the amendment is not the amendment I had originally intended to offer.

After receiving a letter from the Justice Department about problems with the committee bill and after consulting with other Senators, I have decided to offer new language.

The proposed amendment would add a new subsection designed to cause the Army Corps of Engineers to reevaluate the current enforcement program in order to derive a more effective way to deal with section 404 violations.

The language now in S. 1128 would allow the EPA administration to assess civil penalties for violations of permit terms or conditions under Section 404 which are issued and administered by the Army Corps of Engineers.

The amendment would not give EPA authority over violations of the permit itself.

EPA was not granted authority over the permit violations because it is simply unreasonable to have one Federal agency administratively enforce violations of another Federal agency's permit program. This is why the Department of Justice reports that "we are aware of no precedent for such an approach."

Under my amendment the Secretary of the Army is required to prepare and submit a report to the Congress, which will examine potential additional enforcement mechanisms, including an administrative civil penalty mechanism.

That report, due by December 1, 1987, will also carefully examine the corps' existing enforcement authorities. Working with the General Accounting Office, the corps shall also examine their existing enforcement authorities and develop new ways to improve them.

I believe revisions in the committee language are necessary because there are geographical variations with regard to wetlands. Wetlands in the East are very different from "prairie potholes" in Texas, or highland marshes in Wyoming.

Congress and Federal officials must be aware of these geographic differences in order to formulate workable laws and regulations. It is impossible to formulate "generic" environmental regulations that will apply equally to the real world that contains tremendous variability.

I believe this amendment will have the Corps of Engineers enforcing only the programs that the corps issues its permits for. The corps has had a great deal of experience with various types of wetlands, and by enforcement of the 404 program solely within the corps I believe the public will be better served.

Finally, Mr. President, I would like to acknowledge the contributions made to the formulation of this amendment by all the fine staff involved. This amendment would not have been possible without the ability, patience—and persistence—of Brent Erickson of my fine personal staff. I would also like to thank all of the staff of the Environment and Public Works Committee, and most especially to Jim Strock, a very bright and able counsel who has been of invaluable assistance.

Mr. President, the principals, the four managers of the bill, have agreed with the sponsors of this amendment as to the content of the amendment. I want to tell them that I deeply appreciate their assistance and their patience while we have worked through this rather intriguing issue.

I think the progress on the Clean Water Act reauthorization has been extraordinary. I commend Senator Chafee, Senator Mitchell, and our good chairman, Senator Stafford, and also the ranking member, Senator Bentsen. The essence of this amendment is to provide simply that under the permitting process of section 404, instead of having a duality where we have a permit issued and then another agency enforcing the permit by administrative remedies, the purpose of the amendment is to state the Corps of Engineers will do the permitting, and they will also be involved in the administrative remedies and civil penalty mechanism.

That is the essence of the amendment. The authority and the procedures to the Corps of Engineers are the same as they are in the act with the EPA.

It does provide the same language as to the 5-year sunset provision.

With that, Mr. President, I move adoption of the amendment.

Mr. WALLOP. Mr. President, section 109(d) of the bill provides the EPA administrator with authority to levy administrative penalties. The committee's version of the bill allows such penalties to be imposed by the Administrator for violation of section 404 dredged or fill permits.

Under the Clean Water Act, section 404 permits are issued by the Army Corps of Engineers. Consistent therewith, section 404 places enforcement powers in the Secretary of the Army for violations of such permits. In the past, section 404 has been effectively enforced through the Secretary of Army's authority under the act.

In S. 53 we have increased the civil and criminal penalties available for enforcement of section 404 in court. There is no demonstrable need to add administrative penalty power in order to enforce section 404. The addition of administrative penalties would be a step in the wrong direction. Potential abuse of section 404 through administrative implementation of the program has been of great concern, particularly in the semi-arid States of the West where water project development is an ongoing necessity. The new administrative penalty authority of the EPA administrator is not properly applicable to permits which are issued by another agency.

The amendment crafted by Senator Simpson, Chafee, and Stevens represents a middle that should remain workable in the real world and I would like to add my name as a cosponsor.

Mr. MURKOWSKI. Mr. President, I rise in support of the amendment by Senator Simpson that would prevent the EPA from assessing civil penalties for alleged violations of Corps of Engineer permits issued under section 404.

Senator Simpson's amendment would modify an astoundingly misguided provision of the committee's bill. This provision, added at the insistence of the EPA, has been vigorously opposed by the Corps of Engineers, and by the Department of Justice. The corps and the Department of Justice now have enforcement responsibility over section 404 permits. The EPA, however, is attempting to assert itself in the 404 enforcement process by suggesting that it be allowed to assess civil penalities.

As the Department of Justice asserts:

> It simply makes no sense from the standpoint of orderly enforcement of an administrative permit program for one federal agency to administratively enforce violations of another federal agency's permit program. We are aware of no precedent for such an approach, and we strongly urge that the Senate narrow the scope of EPA's administrative authority under section 404 by deleting the words "or the Secretary of the Army" from proposed section 309(g)(1) of the Act.

Mr. President, the Senate recently adopted an amendment offered by Senator Stevens and myself that would force the EPA and the corps to agree to end needless duplication and time delays in obtaining 404 and 402 permits fo. log transfer facilities. As my senior colleague from Alaska so clearly stated in his statements in support of our amendment, the logging industry in Alaska consists typically of small businesspersons who simply cannot withstand the needless regulatory burdens placed on their operations by the EPA. They cannot waste their time and money traveling to Seattle to constantly work paper regulations through an agency that seems to have as its purpose adding more and more requirements on small logging operators.

Our amendment today addressed this concern, and mandates a needed change.

Now, however, Mr. President, we are seeing once again an attempt by the EPA to enter another agency's enforcement territory. EPA, against the expressed opposition by the corps and the Department of Justice, wants to assess penalties for 404 permit violations. This makes no sense from an enforcement standpoint, as the Department of Justic says, and it gives further reason why this Senate must rein in an agency that seems to be operating on its own.

In objecting to the EPA's attempt to take enforcement authority, the corps has written:

> . . . the Army is charged with administering the (404) program. This provision will seriously affect our ability to do so in an efficient, effective manner. It is very bad management practice to fragment any program. Fragmentation virtually always results in duplication, overlap, contradiction, and loss of morale and quality of work.

Mr. President, how could the Senate support the EPA's attempt to fragment an existing enforcement program? What purpose would be served? I am convinced that the EPA has enough difficulty adequately managing its own programs—and I will simply not support its attempt to meddle where it does not belong.

Mr. President, I strongly object to allowing the EPA to assess civil penalties under the 404 program. I ask my colleagues to support Senator Simpson's amendment.

Mr. CHAFEE. Mr. President, we find the amendment of the Senator from Wyoming acceptable on this side.

Mr. MITCHELL. Mr. President, there are no objections to the amendment.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 346) was agreed to.

Mr. SIMPSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CHAFEE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SIMPSON. Mr. President, I ask unanimous consent that Senator Wallop be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HUMPHREY. Mr. President, today the Senate is considering one of the most important pieces of environmental legislation that will come before the Congress this session. The bill before us, S. 1128, the Clean Water Act Amendments of 1985, as reported by the Committee on Environment and Public Works, is an excellent bill that deserves the strong support of all Senators. That we are taking up this important matter at such a relatively early point in the legislative session is a tribute to the outstanding leadership of Senator Chafee, the bill's sponsor, Senator Stafford, the chairman of the full Environment and Public Works Committee, as well as the distinguished leaders on the Democratic side.

The bill before us makes much needed changes to the regulatory program of the act which is the basis for advancing our national goals for clean water. It is clear from the substantial progress that has been made over the years since 1972, that the premises which form the foundation for the Clean Water Act are fundamentally sound. Despite the progress that has been made, more needs to be done. In this regard, it is particularly troubling to observe that pervasive toxic pollutants pose a serious threat to water quality. By enhancing and extending the technology based approach of the original act through the application of best available technology [BAT], this bill directly addresses the key water quality issues facing us today.

In addition to the reaffirmation of the BAT guidelines, this bill also makes other important changes to existing law. Of particular importance is the establishment of a Nonpoint Source Pollution Program. Nonpoint source pollution is runoff pollution, and is the source of more than half of the conventional pollutants entering our streams. Urban runoff from roofs and paved areas, return flows from irrigated agricultural lands, runoff from lands disturbed by construction, forestry operations or agricultural practices, and uncollected runoff and seepage from mining areas all contribute to the nonpoint source pollution problem. This bill, which encourages States to develop effective management programs to reduce nonpoint sources of pollution, represents a major step forward in efforts to address this ubiquitous threat to our Nation's waterways.

I am also pleased that the committee took action to retain the present permit period of 5 years under the national pollution discharge elimination system [NPDES]. By maintaining the present permit length at 5 years, we will be assured the continued availability of one of our most effective mechanisms for ensuring water quality.

Additionally, the bill before us reaffirms our national commitment to maintain a strong and viable construction grants program. Though there has been a strong Federal presence in this program for many years, beginning in 1977 the Congress began to shift the focus of the program away from Washington to the States and local communities. The proposal incorporated in S. 1128, which continues the present grant formula for 3 years and then helps States to establish water pollution revolving loan funds, provides a workable means to establish local responsibility and self-sufficiency, while ensuring adequate resources to meet national water quality goals.

Finally, I must add that the legislation now before us resolves the question of the Hampton, NH, ad valorem tax and permits the town to continue using this tax to pay for the operation and maintenance of its treatment works, thus clearing up an administrative question of long standing, and establishing that Hampton is and has in fact been in compliance with the law. The Environmental Protection Agency [EPA] should not attempt to recover costs from Hampton for the development of the alternative user fee system. Hampton was clearly caught in a bureaucratic dispute over this issue and should not have been required by EPA to develop an actual use system in the first place.

Mr. President, this is a good package. Our national goals for clean water are strongly reaffirmed by this legislation. The authorities and resources contained in this bill reflect an enduring commitment to protecting a resource so essential to the people of this Nation. I urge adoption of the bill.

Mr. PELL. Mr. President, I intend to vote in support of S. 1128, the Clean Water Act Amendments of 1985 despite some reservations about the wisdom of continuing to shift the burden of wastewater treatment construction costs from the Federal Government to State and local governments.

I commend the members of the Senate Environment and Public Works Committee, including the members of the Environmental Pollution Subcommittee, who have labored long and hard to fashion a measure that should be acceptable to the administration. This measure also makes several changes that should enhance our ability to combat water pollution.

These changes include the addition of a new section to the Clean Water Act designed to reduce pollution from so-called nonpoint sources, such as runoff from agricultural land and the pollutants washed by the rain from our city streets into our streams and rivers.

They also include the creation of a program for cleaning up toxic hot spots—where water quality goals will not be met even after polluters have installed the best available cleanup technologies required under existing law.

Other important changes in the Clean Water Act, as reported by the committee, include measures to restrict exemptions and tighten standards. One such measure, for example, will tightly restrict the conditions under which industrial polluters may obtain waivers from national toxic pollutant standards.

The bill, by and large, is an improvement and represents a concerted effort to address our Nation's water pollution problems. I must emphasize, however, that those pollution problems have not been resolved and are not going to just fade away without a continuing national effort to address them.

Although the committee bill, as reported, contained an increase of about $1 million for Rhode Island under the proposed Wastewater Treatment Construction Grants Program, several Rhode Island communities have complained bitterly to me about the gradual shift from Federal to State and local funding of wastewater treatment construction costs.

A letter from one irate local official distilled volumes of bitterness into one brief statement: "The Federal Government has reneged on its commitments given in the past and is promoting the abolishment of this program in the immediate future. Years of effort are in danger of being wasted and future generations are being sold down the river."

The criticism may be a bit harsh, but it is not entirely undeserved. We set the national standard of "fishable, swimable water" and we made the commitment to put Federal taxpayers dollars to work on a long-range, costly, national effort to meet those standards. Communities that believed us then are finding themselves stuck with the bill now.

We should not lower our standards and we should not stick state and local communities with the total bill. We must not lower our sights to lesser goals by reducing the national standard. Likewise, we should not try to shift the enormous burden of wastewater treatment construction costs to the State and local governments.

Not too long ago, before Congress cut the authorization for these important construction grants in half to the present $2.4 billion, I protested at a hearing of the Environmental Pollution Subcommittee. I also protested about the phased reduction of federal assistance that has since transpired.

Under other circumstances, I might oppose this bill because it continues the recent trend of abandoning the State and local governments. It requires them to spend more and more of their own funds to address water pollution problems and to meet a national standard set by us in the Clean Water Act.

My colleague, the distinguished junior Senator from Rhode Island [Mr. CHAFEE] has devoted his considerable skill and knowledge to fashioning a measure that should be acceptable to a majority of the Senate and to the administration. I believe this bill is the best we can hope for in the Senate.

When we first passed the Clean Water Act, along with other landmark environmental laws, we made it clear that the Federal Government has a definite role in setting national environmental standards and an equally important role in helping to meet those standards. We must not abandon either of those vital roles.

I believe that the funding authorized by this extension of the Clean Water Act is as much as we are likely to win. It is not, however, as much as we need. I hope, when the economic climate improves, we will review and renew our national commitment to the long-range goals and high standards set by the Clean Water Act.

Mr. **BINGAMAN**. Mr. President, I rise in support of S. 1128, the Clean Water Act Amendments of 1985. I am pleased to be a cosponsor of this important piece of legislation. Every citizen has a personal stake in the quality of the Nation's waters. We need water that is safe to drink, habitable for aquatic life, and usable for agriculture and industry. Health, jobs, and the quality of our lives are affected in many ways by water quality. This is especially true in the arid West where water is such a precious commodity. Unfortunately, we too often take the quality of our water for granted.

Water pollution, with its many sources, is a complex problem to which there is no simple solution, no cheap technological fix. If we keep hazardous waste out of our water, it must then be disposed of elsewhere—on land, at sea or by incineration. Similarly, conventional sewage treatment can leave behind huge volumes of sludge that must be used or disposed of, while alternative forms of wastewater treatment that recycle or reclaim pollutants have been slow to be implemented. Additionally, every time it rains, water moving over the surface of the land picks up sediment, toxic substances, and other contaminants and carries them to the nearest body of water. More and more often, our ground water supplies are being contaminated in this way.

A Federal program to address some of these problems in a comprehensive fashion was established in 1972 with the enactment of the Federal Water Pollution Control Act Amendments. This law was the product of long experience with generally ineffective State and Federal pollution control programs. In 1977 the law underwent a series of midcourse corrections.and its name was changed to the Clean Water Act. The act expired in 1982 and must now be reauthorized. Though water quality problems persist, progress has been made. This is evidence that the act is working. It has prevented further deterioration of water quality during a decade of economic and population growth.

Specifically, provisions in the Clean Water Act Amendments of 1985 would: Add a new section to the Clean Water Act aimed at reducing pollution from nonpoint sources, such as runoff from farmland and city streets, establish a program for cleaning up toxic "hot sports"—waters which will not meet water quality goals even after polluters have installed the best available cleanup technologies required under existing law, restrict tightly the conditions under which industrial polluters may obtain waivers—known as fundamentally different factors variances—from national toxic pollutant standards, add provisions to prevent the lowering of discharge limits when a pollution discharge permit is revised or renewed, and amends title II of the act to include Indian tribal participation. Specifically, a 1-year study of sewage treatment needs of Indian lands will be conducted jointly by the EPA and the Indian Health Service; tribes will become eligible in fiscal year 1987 for direct EPA construction grants to address needs identified in the study; and Indian tribes may be treated as States, within the discretion of the EPA Administrator, to the degree necessary to allot funds for tribal sewage treatment needs.

Continued improvment in our Nation's water quality is not possible unless Congress renews its commitment to restore and strengthen the Clean Water Act. The bill before us today provides that encouragement and commitment. I urge my colleagues to support the bill.

LIMITATION OF RAW SEWAGE DISCHARGES BY NEW YORK CITY

Mr. MOYNIHAN. Mr. President, I would like to speak to section 120 of S. 1128, the provision that would limit the discharge of raw sewage by New York City. It is certainly imperative that such discharges near New York City—and near more than 200 other locations across the United States—end as soon as possible. New York City is making a major effort to do so; two sewage treatment plants now are under construction—North River and Red Hook—and soon will eliminate continuous raw discharges to the Hudson River and New York Harbor.

The larger of the two plants, North River, is an engineering marvel. Perched on a huge concrete slab over the Hudson, it will collect, pump, and treat up to 200 million gallons of sewage every day. A thousand workers are at work on the site, and the plant is expected to be complete by November 1985. I would note that a consent agreement among New York City, New York State, and the Environmental Protection Agency does not require its completion until 6 months later. The second plant, Red Hook is similarly ahead of schedule and will be treating waste by December 1986.

In view of New York City's aggressive program to eliminate the discharge of raw sewage, I see no need for this provision. This legislation will not hasten completion of the two treatment facilities, where work is already proceeding as rapidly as possible. I also believe that any strategy to improve water quality should be applied nationwide. The Environmental Protection Agency has identifed 242 locations in the United States where sewage is not treated. Yet this provision would affect only New York City's discharges.

Although section 120 is unnecessary, I will not oppose it because it now includes safeguards against the imposition of undue sanctions on New York. The EPA Administrator is required to waive the sewage discharge limitations if a violation is caused by excessive rainfall, random or seasonal variation in flow, or an interruption in plant operation caused by factors beyond the city's control. If a violation of the cap is associated with random or seasonal variations or rainfall, the Administrator must grant a waiver unless he or she shows, on the basis of information above sewer hookups, that the cap would not have been exceeded but for such hookups. The responsibility for monitoring discharges of raw sewage, both for establishing the numerical level of the cap and determining whether a violation has occurred, lies with the EPA. Similarly, the deadline must be extended if completion of one of the plants is delayed by a natural disaster, strike, or other event beyond the city's control.

Finally, section 120 states the sense of the Congress that EPA should not agree to modifications of the consent agreement with respect to the schedule for advanced preliminary treatment. For example, delays, if not due to circumstances beyond the city's reasonable control, would not be desirable.

CONTINUATION OF THE CHESAPEAKE BAY PROGRAM

Mr. MATHIAS. Mr. President, I should like to point out to my colleagues a provision in the Clean Water Act Amendments of 1985 that is a source of both pride and hope for the people of my State and the region. It is a measure to continue the effort to clean up our Nation's largest and most productive estuary, the Chesapeake Bay, and I wish to thank Senators CHAFEE and STAFFORD, who have both been instrumental in this undertaking. They have been two of the Chesapeake Bay's longest standing and best friends, and they have again demonstrated their support by including this provision in the amendments to the Clean Water Act.

This provision is a focus of pride for those who know and love the Chesapeake because it recognizes how far we have come in our effort to save the bay. Thirteen years ago, I took a boat tour of the bay. At that time, we were only beginning to understand the full extent of the bay's decline. To the watermen who worked its waters or the sportsmen and vacationers who wandered its shores, the bay appeared much as it had for centuries. But under its surface the long years of neglect and pollution had begun to choke its once-abundant marine and plant life. The bay was in trouble.

Two years later, in 1975, Congress, at my request, authorized a thorough study to identify the sources of these environmental problems and to recommend solutions. That 7-year study was released in 1983 and in the 2 years since, we have made great strides toward restoration of the bay. In that short time, the three States bordering the bay—Virginia, Maryland, and Pennsylvania—have initiated comprehensive cleanup programs and President Reagan made a strong commitment to the effort in his State of the Union Address last year. In fact, the Federal-State partnership in the Chesapeake Bay cleanup has become a model for similar environmental projects across the Nation.

The three bay States, once fierce

rivals, have joined forces to attack the pollution threatening the bay and revitalize the bay's beleaguered marine species.

The Federal Government has pulled together and devised a strategy to complement the States' programs. Last November, in an act of coordination, perhaps unprecedented, the heads of five Federal agencies involved in the cleanup—the U.S. Fish and Wildlife Service, the Soil Conservation Service, the U.S. Geological Survey, the National Oceanic and Atmospheric Administration, and the Army Corps of Engineers—met to sign memorandums of understanding with the lead Federal agency, the Environmental Protection Agency, spelling out exactly what role each agency will play in that effort.

The Clean Water Act amendments that we consider today are a major boost to our efforts. The bay provision in this bill would provide $39 million over the next 3 years to continue the progress we have made. Thirty million dollars of that sum will be available to Virginia, Maryland, and Pennsylvania over that 3-year period to allow them to accelerate the cleanup. The remaining $9 million would help to sustain EPA's vital research effort through its Chesapeake Bay field office tracking pollution trends and identifying ways to reverse them.

This bill would move us measurably closer to our goal of a clean and thriving Chesapeake Bay and I urge my colleagues to join me in its support.

Mr. SIMPSON. Mr. President, the Clean Water Act has been the one item of environmental legislation most directly responsible for making so much of this Nation's waters fishable and swimmable by reducing water borne pollution of all types. It is important that Congress complete action on the Clean Water Act this year and that the President sign this reauthorization into law.

The Senate has taken measures to provide for Federal grants of over $18 billion over the fiscal years 1986 through 1994. However, the Senate clearly recognizes the need to reduce the Federal deficit and intends to phase out direct construction grant funding by changing the program to a State revolving loan fund program. This is a vital change in the way we do our business with the States and municipalities that are responsible for constructing sewage treatment facilities. The benefits of a phaseout of direct aid are twofold—the Nation's waters will continue toward cleanup, and the Federal deficit will be chopped.

Title II of the Senate bill contains provisions for various permit requirements that industries must meet. The Senate bill generally tightens and expands water pollution control efforts across the board. For the first time we are authorizing a new nonpoint source pollution control program which was meant to reduce water degradation caused by different types of agricultural runoff and soil erosion. The Senate has chosen not to make a mandatory program. Instead this new nonpoint program will be a demonstration-in-grant program that will assist the agricultural community in its efforts to develop more efficient farming methods that will have the secondary benefit of protecting our Nation's waters.

The Senate bill also established a program for cleaning up toxic hot spots which are areas that have waters that will not meet quality standards even after polluters have installed the best available technologies [BAT] required under the law.

I believe that the clean water bill that the Senate Environment Committee has reported this year is far superior to the legislation that was reported earlier. The Environment and Public Works Committee has worked closely with the administration and with all interest groups to craft language that represents a balanced approach to controlling water pollution. Much of the Western United States have pristine waters that have never been degraded by manmade pollution. With the reauthorization of the Clean Water Act, we can rest assured that these waters will continue to remain unspoiled. We may also be assured that those who must comply with the terms of the Clean Water Act will have some straightforward and predictable regulations to deal with.

Senator DOLE and I remain committed to doing everything we can to stimulate the Senate to consideration and approval of environmental legislation this year. The Senate has already taken swift action on the Safe Drinking Water Act and will likely finish up consideration of Superfund by late summer. I am pleased that through the vigorous efforts of my fine friend, the chairman, BOB STAFFORD, the Environment and Public Works Committee is on schedule and that members of the Senate are devoting proper attention to these important environmental statutes. Environmental issues are truly bipartisan in nature and I trust that this will be a productive year where environmental legislation is thoughtfully and fully considered. I look forward to our continued progress.

Mr. MATHIAS. Mr. President, I notice that the committee bill provides Federal support of State and local abatement efforts of nonpoint pollution. I would like clarification from the distinguished chairman of the Subcommittee on Environmental Pollution, Mr. CHAFEE, on three provisions of the bill addressing nonpoint source pollution.

First, I refer to the proposed new section 205(j)(5) of the Clean Water Act. This new language requires the EPA Administrator to reserve 1 percent of a State's allocation under section 205(c) or $100,000, whichever is greater, for approved State nonpoint pollution control programs. The State may decide to use all but $100,000 of the amount reserved by the Administrator for wastewater treatment construction grant projects.

Elsewhere in the bill, in section 319, another nonpoint source pollution control program is authorized beginning at $70 million in the first year.

What is the difference between these two provisions?

Mr. CHAFEE. The States have indicated that most of them would not be able to achieve the water quality goals of the Clean Water Act if they do not abate nonpoint sources of water pollution. Many States have in place existing nonpoint source implementation programs to address the problem. Our intent here is to assure that they have at least $100,000 a year of support from the Federal Government in implementing their programs. We want to go on record as lending the support of the Federal Government to these implementation programs. The $100,000 minimum is the same as the existing provision in section 205(j), which has been used to support various water quality planning and program support functions. The purpose is to ensure that every State has available at least a minimum level of Federal support.

To illustrate how the set-aside provision works, I can describe how it would affect your own State, which has been a leader in the development of programs to control nonpoint source pollution. Assuming the allotment formula proposed in S. 1128, approximately $460,000 would be reserved by the new section 205(j)(5) for support of the section 319 nonpoint program. Of this amount, $100,000 is dedicated solely to this purpose; that is, if it is not used for the nonpoint program it will be reallotted to other States. The balance of $360,000 is available for the nonpoint program but the State may, if it chooses, use it for traditional construction grant purposes. The effect is that your State is assured Federal support for its nonpoint program, but at the same time it is accorded considerable flexibility in determining the exact amount of that support—in this case, within the range of $100,000 to $360,000.

I want to emphasize that these funds are intended to supplement the funds authorized by section 319, not to replace them.

Mr. MATHIAS. I thank the Senator from Rhode Island for that clarification.

I also have a question with respect to the provisions of section 319. That section provides that funds may be used for approved State implementation programs to control nonpoint source pollution. Two-thirds of the funds is to be allocated according to the formula in the committee report and one-third is to be allocated at the discretion of the Administrator. The bill goes on to indicate that, although the funds may not routinely be used for implementation of best management practices [BMP's], they can be used for demonstration projects of BMP's.

Will the Senator from Rhode Island clarify the types of activities for which section 319 funds can be used?

Mr. CHAFEE. It is our intent that the section 319 funds be available to the States for the implementation by the State of its approved nonpoint source control program. By this, we do include, for example, administrative costs, educational material, technical assistance in the field at the project or land parcel level, and environmental monitoring. We do not want these funds to be used for the basic type of planning work that the Federal Government paid for previously with grants to States and areawide planning agencies to prepare nonpoint source programs pursuant to the provisions of section 208. We are beyond that stage now. If States have not prepared those programs, then they may use either section 205(j)(2) or section 106 funds for program development, but that is not the intended use for section 319 funds. This is not a planning program. This is an implementation program.

On the subject of cost-sharing, these funds shall not be utilized for individual landowners to implement best management practices on their land. Many States require BMP's through a regulatory process, such as for sediment control, stormwater management, or mining. BMP's for other sources such as agriculture are predominantly implemented through a voluntary program. We expect the existing Federal programs such as the ACP Program, the Rural Clean Water Program, the Surface Mining Reclamation Program, and the Clean Water Program, to be the vehicles through which the Federal contribution is made to these cost-sharing efforts. Of course, State and local governments are not precluded from using their own sources for cost-sharing and many of them are doing so. Some States are using general obligation bonds. Others are using sales taxes. Others are using special bond issues. There are a variety of funding alternatives which States may use to secure revenue to pay for cost-sharing.

The exception to this general policy, which we have provided for in the bill, is for demonstration projects. We also want to encourage the States to develop innovative best management practices, as yet unproven in terms of their effectiveness in reducing pollution.

Mr. MATHIAS. I thank the distinguished Senator. The final question I have relates to the proposed new title VI of the Clean Water Act, "Grants for Water Pollution Control Revolving Funds." Section 603 of that title authorizes State revolving funds to be used for nonpoint source abatement, for the implementation of a national estuary program, and for the conventional wastewater treatment projects.

Is that a priority among the three uses of such revolving fund?

Mr. CHAFEE. This provision is intended to build in some flexibility in the way a State may use its revolving loan fund to combat pollution. In the near term, the revolving loan funds must be used to assure maintenance of progress in the completion of publicly owned treatment works needed to meet the enforceable deadline and requirements of the act. Once this is accomplished, the State is free, at its discretion, to use its revolving loan fund to make loans to individuals for the implementation of best management practices and for the implementation of the national estuary program pursuant to section 320 of the act. In other words, we do not want to limit for all time the use of State revolving loan funds to traditional construction of treatment plants. As time goes on, States may want to use these funds more effectively to make loans to combat nonpoint source pollution. This section does not have the restriction of use only for demonstration projects that is built into section 319 funds. All loans of course must be paid back to the loan fund in accordance with the requirements of title VI.

In summary, these three provisions—the section 319 authorization, the 1-percent set aside, and flexible use of State revolving loan funds—are designed to assure the opportunity for continued support for a State's nonpoint efforts, and they are designed as well to accord more flexibility to the State as time goes on. Thus, the responsibility will be on the States to submit their nonpoint programs to EPA and then to use the variety of funding mechanisms established in this bill.

Mr. MATHIAS. I thank the distinguished Senator for his explanation of these provisions. I am pleased to see them in the bill.

As many of my colleagues know, my own State of Maryland is a national leader in the development of an estuarine protection program for the Chesapeake Bay and of measures to abate nonpoint pollution to its waters. Efforts underway, such as the definition of critical areas along the bay's shoreline, aid in protecting and nurturing fragile wetlands and important breeding and spawning areas.

Much of this effort results directly from the earlier EPA Chesapeake Bay Program, which explored the dynamics of the bay as an ecosystem, defined its most critical pollutants and many of their sources, and established a data baseline against which trends can be monitored. The Chesapeake Bay Program brought together the States affecting the bay—Pennsylvania, Maryland, Virginia, and the District of Columbia—in cooperation with several Federal agencies.

The program is a national model for other States as they attack their own regional water quality problems. Indeed, the National Estuary Program, established by section 320 of the bill, is a direct result of our experiences with the Bay Program in Maryland.

We in Maryland know how vital the control of nonpoint source pollution is. More than 400 million pounds of toxic industrial chemicals are discharged into our Nation's waters each year. No matter how much money we spend on sewage treatment plants, we still are confronted with water pollution problems from sources that are not easily identified or localized. For example, one of the key findings of the EPA Chesapeake Bay Program was that a significant portion of the nitrogen entering the bay was coming from upstream farming practices. Heavy metals were entering the bay in the storm and rainwater runoff from our cities. Yet, current programs are not designed to address these nonpoint source pollution problems. I am pleased to see these amendments to the Clean Water Act provide a beginning for cleanup strategies for such problems.

Mr. DOLE. Mr. President, I rise today in support of S. 1128, the Clean Water Act Amendments of 1985 and encourage the Senate to act expeditiously on this important environmental legislation.

Mr. President, during the 13-year history of the Clean Water Act our Nation has made considerable progress toward improving the quality of the Nation's water. The regulatory framework established to implement control of pollutant discharges has largely been successful. The legislation before the Senate will continue and strengthen the existing program in a way that is acceptable to a broad range of diverse interests. The chairman of the committee, Mr. STAFFORD, the chairman of the subcommittee, Mr. CHAFEE, and the ranking members, Mr. BENTSEN and Mr. MITCHELL, should be commended for their diligent efforts in bringing this legislation to the floor.

NONPOINT SOURCE POLLUTION

I am particularly pleased that the controversial issue of nonpoint source pollution has been addressed in a manner that meets our environmental needs without crippling the agricultural segment of our economy. Runoff from agricultural and mining areas, construction sites, and urban areas present a serious pollution problem. Obviously these problems vary widely between the States. This legislation encourages the States to implement management programs that will target critical areas, identify nonpoint sources and set timetables for program implementation.

I am also pleased that resolution was reached with respect to the amendment offered by the distinguished Senators from Alaska, Senators Stevens and Murkowski. Both the EPA and the Corps of Engineers must be encouraged to resolve their differences over the management and enforcement of the section 404 and 402 permits. The amendment offered and the colloquy entered into on this subject make clear our intentions to pursue this matter until it is settled.

CONSTRUCTION GRANTS

Mr. President there is a great deal of controversy surrounding the allotment formula for distributing construction grant funds and State revolving fund capitalization grants. That is not surprising when there is $2.4 billion per year that will be allocated to the States.

Starting from current law, any change in the allotment formula will produce winners and losers. As this Senator would expect, most Senators have lined up behind the formula that provides the greatest benefit to their State.

In my view, the compromise formula that has been worked out is a fair proposal. While providing for formula reform, it addresses the concerns of those who felt that certain States were being discriminated against and stood to lose considerable amounts. The Senators involved in resolving this difficult issue, including Senators Durenberger, D'Amato, Levin, Chaffee, Stafford, Moynihan, and Mitchell, are to be commended for their willingness to work out an acceptable agreement.

CONCLUSION

The distinguished chairman and ranking member of the committee, Senators Stafford and Bentsen, along with the distinguished subcommittee chairman and ranking member, Senators Chafee and Mitchell, are to be commended for their efforts in resolving the issues surrounding this bill. What we have is an agreement that strikes a balance between those concerned with overregulation and an inequitable distribution of funds and those concerned with protecting a precious natural resource and insuring that funds are disbursed in a rational fashion to meet the needs of the various States.

Mr. CHAFEE. Mr. President, we are prepared to move to third reading. I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. CHAFEE. Mr. President, on this side we are prepared to vote.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, following action on this proposal, we will take up the Nuclear Regulatory Commission. I understand that has been worked out. I cannot guarantee there will not be a vote. If we can do that, it would be my intention, if we can get an agreement on another bill for Monday, not to have a session of the Senate on tomorrow. We will not know about that agreement until sometime after this vote.

The PRESIDING OFFICER (Mr. Symms). The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this question, the yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from North Carolina [Mr. East] and the Senator from Kansas [Mrs. Kassebaum] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Arkansas [Mr. Bumpers], the Senator from Illinois [Mr. Dixon], the Senator from Missouri [Mr. Eagleton], and the Senator from Massachusetts [Mr. Kerry] are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts [Mr. Kerry] would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 94, nays 0, as follows:

[Rollcall Vote No. 126 Leg.]

YEAS—94

Abdnor
Andrews
Armstrong
Baucus
Bentsen
Biden
Bingaman
Boren
Boschwitz
Bradley
Burdick
Byrd
Chafee
Chiles
Cochran
Cohen
Cranston
D'Amato
Danforth
DeConcini
Denton
Dodd
Dole
Domenici
Durenberger
Evans
Exon
Ford
Garn
Glenn
Goldwater
Gore
Gorton
Gramm
Grassley
Harkin
Hart
Hatch
Hatfield
Hawkins
Hecht
Heflin
Heinz
Helms
Hollings
Humphrey
Inouye
Johnston
Kasten
Kennedy
Lautenberg
Laxalt
Leahy
Levin
Long
Lugar
Mathias
Matsunaga
Mattingly
McClure
McConnell
Melcher
Metzenbaum
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pell
Pressler
Proxmire
Pryor
Quayle
Riegle
Rockefeller
Roth
Rudman
Sarbanes
Sasser
Simon
Simpson
Specter
Stafford
Stennis
Stevens
Symms
Thurmond
Trible
Wallop
Warner
Weicker
Wilson
Zorinsky

NOT VOTING—6

Bumpers
Dixon
Eagleton
East
Kassebaum
Kerry

So the bill (S. 1128), as amended, was passed, as follows:

S. 1128

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Clean Water Act Amendments of 1985".

TITLE I—REGULATORY AMENDMENTS

AUTHORIZATION

SEC. 101. (a) Section 104(u)(1) of the Clean Water Act is amended by inserting immediately following "1982" the phrase ", and not to exceed $22,770,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989".

(b) Section 104(u)(2) of the Clean Water Act is amended by inserting immediately following "1982" the phrase ", and not to exceed $3,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989".

(c) Section 104(u)(3) of the Clean Water Act is amended by striking "and" after "1981," and by inserting immediately following "1982" the phrase ", and not to exceed $1,500,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989".

(d) Section 106(a)(2) of the Clean Water Act is amended by striking "and" after "1981" and inserting in lieu thereof a comma and by inserting ", 1986, 1987, 1988, and 1989" immediately following "1982".

(e) Section 112(c) of the Clean Water Act is amended by striking "and" after "1981," and inserting immediately following "1982" the phrase ", and $7,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989".

(f) Section 314(c)(2) of the Clean Water Act is amended by striking "and" after "1981," and inserting immediately following "1982" the phrase ", and $30,000,000 per fiscal year for fiscal years 1986, 1987, 1988, and 1989".

(g) Section 517 of the Clean Water Act is amended by striking "and" after "1981," and inserting immediately following "1982" the phrase ", and $160,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989".

SMALL FLOWS CLEARINGHOUSE

SEC. 102. Section 104(q) of the Clean Water Act is amended by adding the following new paragraph:

"(4) Notwithstanding section 205(d) of this Act, from funds that are set aside by States under section 205(i) of this Act and not obligated by the end of the twenty-four month period provided under section 205(d), the Administrator shall award a grant under this section in the amount of $1,000,000 or such unobligated amount, whichever is less, in each year, to support a National Clearinghouse to collect and disseminate information on small flows and innovative or alternative technologies, consistent with paragraph (3).".

COMPLIANCE DATES

SEC. 103. (a) Section 301(b)(2)(C) of the Clean Water Act is amended by striking "not later than July 1, 1984," and inserting immediately after "of this paragraph" the following: "as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than July 1, 1988".

(b) Section 301(b)(2)(E) of the Clean Water Act is amended by striking "not later than July 1, 1984," and inserting in lieu thereof "as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than July 1, 1988, compliance with".

(c) Section 301(b)(2)(F) of the Clean Water Act is amended by striking "not" after "subparagraph (A) of this paragraph" and inserting in lieu thereof "as expeditiously as practicable but in no case", and by striking "or not later than July 1, 1984," through the end of the sentence and inserting in lieu thereof "and in no case later than July 1, 1988".

(d) Section 301(b) of the Clean Water Act is amended by adding the following new paragraph:

"(3)(A) for effluent limitations under paragraph (1)(A)(i) of this subsection promulgated after January 1, 1982, and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for such industrial category issued before such date, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than July 1, 1988; and

"(B) for any effluent limitation in accordance with paragraph (1)(A)(i), (2)(A)(i), or (2)(E) of this subsection established only on the basis of section 402(a)(1) in a permit issued after enactment of the Clean Water Act Amendments of 1985, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established, and in no case later than July 1, 1988.".

OCEAN WAIVER

SEC. 104. (a) Section 301(h)(5) of the Clean Water Act is amended to read as follows:

"(5) sources introducing waste into such treatment works are in compliance with all applicable pretreatment requirements and the applicant has assured continued compliance with such requirements and, in the case of any treatment works serving a population of five thousand or more, the applicant has adopted and is enforcing a program to control the entrance of toxic pollutants from industrial sources into such treatment works, comparable to that required by section 402(b)(8);".

(b) Section 301(h) of the Clean Water Act is amended by—

(1) in paragraph (7), striking the period immediately after "the permit" and inserting in lieu thereof a semicolon.

(2) adding immediately after paragraph (7) the following new paragraph:

"(8) the applicant at the time such modification becomes effective will be discharging effluent which has received at least primary or equivalent treatment. For the purposes of this paragraph, "primary or equivalent treatment" means treatment by screening, sedimentation, and skimming adequate to remove at least 30 per centum of the biological oxygen demanding material and of the suspended solids in the treatment works influent, and disinfection, where appropriate.";

(3) in that portion of subsection (h) following new paragraph (8) as added by this Act,

(A) adding immediately after the first sentence thereof the following new sentence: "Such marine waters must exhibit characteristics assuring that water providing dilution does not contain significant amounts of previously discharged effluent from such treatment works."; and

(B) adding at the end thereof the following: "No permit issued under this subsection shall authorize the discharge of any pollutant into saline estuarine waters which at the time of application do not support a balanced indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish, fish and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed discharge.".

(c) Section 301(j)(1)(A) of the Clean Water Act is amended by inserting before the semicolon the following: ", except that a publicly owned treatment works which prior to December 31, 1982, had a contractural arrangement to use a portion of the capacity of an ocean outfall operated by another publicly owned treatment works which has applied for or received a modification under subsection (h) of this section, may apply for a modification under subsection (h) in its own right not later than thirty days after the enactment of the Clean Water Act Amendments of 1985".

MODIFICATION FOR NONCONVENTIONAL POLLUTANTS

SEC. 105. (a) Section 301(g)(1) of the Clean Water Act is amended by striking all preceding "upon a showing by the owner or operator" and inserting in lieu thereof "The Administrator, with the concurrence of the State, may modify the requirements of subsection (b)(2)(A) of this section with respect to the discharge from any point source of ammonia, chlorine, color, iron, or total phenols (4AAP) (when determined by the Administrator to be a nonconventional pollutant under this Act)".

(b) Section 301(g) of the Clean Water Act is amended by adding the following new paragraphs:

"(3) The Administrator may evaluate pollutants subject to this subsection prior to the enactment of the Clean Water Act Amendments of 1985, and if the Administrator determines that for one or more pollutants satisfactory test methods and data are available to make the determination required by paragraph (1), may recommend to the Congress the inclusion of such pollutants under this subsection.

"(4) Any request for a modification under this subsection shall be deemed to have been denied, if not approved by final agency action within one year after submission to the Administrator.

"(5) The amendment made to this subsection by the Clean Water Act Amendments of 1985 shall apply to all modification requests under this subsection pending on the date of enactment of the Clean Water Act Amendments of 1985. Such amendment to this subsection shall not have the effect of extending or reopening the deadline established in section 301(j)(1)(B).".

(c) Section 301(j)(2) of the Clean Water Act is amended by inserting after the first sentence thereof the following: "An application for a modification under subsection (g) shall not stay the applicant's obligation to comply with effluent limitations for all pollutants not the subject of an application for modification, and nothing in this section shall preclude the Administrator (or the State as appropriate) from issuing a permit containing effluent limitations for all pollutants not subject to a stay under this subsection pending a final decision on the request for a modification.".

(d) Section 301(g)(1) is amended by inserting "(1)" immediately after "subsection (b)(2)(A)".

FUNDAMENTALLY DIFFERENT FACTORS

SEC. 106. (a) Section 301 of the Clean Water Act is amended by adding the following new subsections:

"(n)(1) The Administrator, with the concurrence of the State, may establish an alternative requirement under subsection (b)(2) or section 307(b) for a facility that modifies the requirements of national effluent limitation guidelines or categorical pretreatment standards that would otherwise be applicable to such facility, if the owner or operator of such facility demonstrates to the satisfaction of the Administrator that—

"(A) the facility is fundamentally different with respect to the factors (other than cost) specified in section 304 (b) or (g) and considered by the Administrator in establishing such national effluent limitation guidelines or categorical pretreatment standards;

"(B) the application is based solely on information and supporting data submitted to the Administrator during the rulemaking for establishment of the applicable national effluent limitation guidelines or categorical pretreatment standard specifically raising the factors that are fundamentally different for such facility;

"(C) the alternative requirement is no less stringent than justified by the fundamental difference; and

"(D) the alternative requirement will not result in a non-water quality environmental impact which is markedly more adverse than the impact considered by the Administrator in establishing such national effluent limitation guideline or categorical pretreatment standard.

"(2)(A) an application for an alternative requirement under this subsection shall be submitted to the Administrator not later than one hundred twenty days after the publication of the final effluent limitation guideline or categorical pretreatment standard in the Federal Register. The Administrator shall deny any application that is not complete, without providing an opportunity for reapplication.

"(B) an application for an alternative requirement under this subsection shall be deemed to have been denied, if not approved by final agency action within two hundred forty days after submission to the Administrator.

"(C) For the purposes of this subsection, an application for an alternative requirement based on fundamentally different factors which is pending on the date of enactment of the Clean Water Act Amendments of 1985 shall be deemed to have been submitted to the Administrator thirty days after such date of enactment.

"(3) an application for an alternative requirement under this subsection shall not stay the applicant's obligation to comply with the effluent limitation guideline or categorical pretreatment standard which is the subject of the application.

"(4) The authority of this subsection shall apply only to those primary industrial categories identified in the permit regulations issued under section 402 as of the date of enactment of the Clean Water Act Amendments of 1985.

"(o) The Administrator shall prescribe and collect from each applicant fees reflecting the reasonable administrative costs incurred in reviewing and processing applications for modifications submitted to the Administrator pursuant to section 301 (c), (g), (h), (i), (m), and (n), section 304(d)(4), and section 316(a) of this Act. All amounts collected by the Administrator under this subsection shall be deposited into miscellaneous receipts of the Treasury.".

(b) Section 301(l) of the Clean Water Act is amended by striking "The" and inserting in lieu thereof "Other than as provided in subsection (n) of this section, the".

WATER QUALITY-BASED EFFLUENT LIMITATIONS AFTER BAT ATTAINMENT

SEC. 107. (a) Section 305 of the Clean Water Act is amended by adding the following new subsection:

"(c) Each State shall prepare and submit to the Administrator and the Congress within two years after the enactment of the Clean Water Act Amendments of 1985, and revise biennially thereafter, an identification of—

"(1) those waters within or adjacent to such State which after the application of effluent limitations required under section 301(b)(2) of this Act cannot reasonably be anticipated to attain or maintain (A) water quality standards for such waters reviewed, revised or adopted in accordance with section 303(c)(2)(B) of this Act, due to toxic pollutants, or (B) that water quality which shall assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water; and

"(2) those waters within or adjacent to such State which are public water supplies or otherwise important to public health protection, or which have a high quality use designation, and which because of such use and current or potential pollution are of high priority to such State.

In the case of any State which fails to submit the identification required by paragraph (1), or which submits an incomplete identification, the Administrator shall promptly prepare an identification in accordance with paragraph (1).".

(b) Section 304(a) of the Clean Water Act is amended by adding the following new paragraphs:

"(7) The Administrator, after consultation with appropriate State agencies and on the basis of criteria and information published under paragraphs (1) and (2) of this subsection, shall develop and publish, within nine months after the date of enactment of the Clean Water Act Amendments of 1985, guidance to the States on performing the identification required by section 305(c)(1) of this Act.

"(8) The Administrator, after consultation with appropriate State agencies and within two years after the date of enactment of the Clean Water Act Amendments of 1985, shall develop and publish information on methods for establishing and measuring water quality criteria for toxic pollutants on other bases than pollutant-by-pollutant criteria, including biological monitoring and assessment methods.".

(c) Section 303(c)(2) of the Clean Water Act is amended by inserting "(A)" after "(2)" and by adding the following new subparagraph:

"(B) Whenever a State reviews water quality standards pursuant to paragraph (1) of this subsection, or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria for all toxic pollutants listed pursuant to section 307(a)(1) of this Act, the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses. Such criteria shall be specific numerical criteria for such toxic pollutants and in addition may include criteria based on biological monitoring or assessment methods consistent with information published pursuant to section 304(a)(8). Particular attention shall be given to toxic pollutants which are highly persistent in the environment, bioaccumulative, or known or suspected carcinogens, mutagens, or teratogens. Nothing in this section shall be construed to limit or delay the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods or previously adopted numerical criteria.".

(d) Section 303(d) of the Clean Water Act is amended by adding the following new paragraph:

"(4) Not later than two years after the submittal of the identification required by section 305(c)(1) of this Act, each State shall establish effluent limitations for point sources discharging into each portion of the navigable waters identified under section 305(c)(1)(A) as necessary to attain applicable water quality standards, taking into account any substantial nonpoint source contributions of toxic pollutants and existing or planned controls on all sources. Such effluent limitations shall be incorporated into permits under section 402 of this Act, which shall provide for compliance as expeditiously as practicable, but in no event later than three years after the establishment of such effluent limitation.".

(e)(1) Section 302(a) of the Clean Water Act is amended by (1) inserting after "in the judgment of the Administrator" the phrase ", or as identified under section 305(c)"; and (2) inserting after "protection of" the phrase "public health,".

(2) Section 302(b) of the Clean Water Act is amended to read as follows:

"(b)(1) Prior to establishment of any effluent limitation pursuant to subsection (a) of this section, the Administrator shall publish such proposed limitation and within ninety days of such publication hold a public hearing.

"(2)(A) The Administrator, with the concurrence of the State, may issue a permit which modifies the effluent limitations required by subsection (a) of this section for pollutants other than toxic pollutants, if the applicant demonstrates at such hearing that (whether or not technology or other alternative control strategies are available) there is no reasonable relationship between the economic and social costs and the benefits to be obtained (including attainment of the objective of this Act) from achieving such limitation.

"(B) The Administrator, with the concurrence of the State, may issue a permit which modifies the effluent limitations required by subsection (a) of this section for toxic pollutants for a single period not to exceed five years, if the applicant demonstrates to the satisfaction of the Administrator that such modified requirements (1) will represent the maximum degree of control within the economic capability of the owner and operator of the source, and (2) will result in reasonable further progress beyond the requirements of section 301(b)(2) toward the requirements of subsection (a) of this section.".

(f) Section 304 of the Clean Water Act is amended by adding the following new subsection:

"(l) Within twelve months of the date of enactment of the Clean Water Act Amendments of 1985, and biennially thereafter, the Administrator shall publish in the Federal Register a plan which shall:

"(A) establish a schedule for the annual review and revision of promulgated effluent guidelines, in accordance with subsection (b) of this section;

"(B) identify categories of sources discharging toxic or nonconventional pollutants for which guidelines under subsection (b)(2) of this section and section 306 have not previously been published: and

"(C) establish a schedule for promulgation of effluent guidelines for categories identified in subparagraph (B), under which promulgation of such guidelines shall be no later than four years after the date of enactment for categories identified in the first published plan or three years after the publication of the plan for categories identified in later published plans.

"(2) The Administrator shall provide for public review and comment on the plan prior to final publication.".

INDIRECT DISCHARGE OF CONVENTIONAL POLLUTANTS

SEC. 108. Section 402 of the Clean Water Act is amended by adding at the end thereof the following new subsection:

"(m) In issuing a permit under this section, the Administrator shall not require pretreatment by dischargers of conventional pollutants identified pursuant to section 304(b)(4) of this Act as a substitute for municipal treatment adequate to meet the requirements of a permit issued under this section for a treatment works (as defined in section 212 of this Act) which is publicly owned if such discharger is in compliance with all applicable requirements of local pretreatment programs approved under subsection (b)(8) of this section. Nothing in this subsection shall affect the Administrator's authority under sections 307 and 309 of this Act, affect State and local authority under sections 307(b)(4) and 510 of this Act, relieve such treatment works of its obligations to meet requirements established under this Act, or preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.".

CIVIL AND CRIMINAL PENALTIES

SEC. 109. (a) Section 309(d) is amended by—

(1) inserting ", or any requirement imposed in a pretreatment program approved under section 402(a)(3) and (b)(8) of this Act," immediately after "section 404 of this Act by a State";

(2) deleting "$10,000 per day of such violation" and substituting "$25,000 per day for each violation";

(3) adding the following at the end thereof: "In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require.".

(b) No State shall be required to modify a permit program approved or submitted under section 402 of the Clean Water Act as a result of the amendment made by subsection (a) of this section before July 1, 1987.

(c) Section 404(s) of the Clean Water Act is amended by striking paragraph (4), by redesignating paragraph (5) as paragraph (4), and in redesignating paragraph (4), by—

(1) deleting "$10,000 per day of such violation" and substituting "$25,000 per day for each violation";

(2) adding the following at the end thereof: "In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require.".

(d) Section 309 of the Clean Water Act is amended by adding a new subsection (g) as follows:

"(g)(1) ADMINISTRATIVE PENALTIES.—In addition to any other relief provided, whenever on the basis of any information available the Administrator finds that any person has violated section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or has violated any permit condition or limitation implementing any of such sections in a permit issued under sections 402 of this Act by him or by a State, or in a permit issued under section 404 by a State, or any requirement imposed in a pretreatment program approved under section 402 (a)(3) and (b)(8) of this Act, the Administrator may, after notice to the State in which the violation occurs, issue an order assessing a civil penalty of not more than $10,000 per day for each violation, up to a maximum administrative penalty of $125,000. In addition to any other relief provided, whenever on the basis of any information available the Secretary of the Army finds that any person has violated any permit condition or limitation in a permit issued under section 404 of this Act by the Secretary of the Army, the Secretary may, after notice to the State in which the violation occurs, issue an order assessing a civil penalty of not more than $10,000 per day for each violation, up to a maximum administrative penalty of $125,000."

"(2) The authority provided in paragraph (1) of this subsection shall expire on September 30, 1990.

"(3) Procedure.—(A) A civil penalty assessed by the Administrator or the Secretary of the Army under this subsection shall be by an order made after opportunity (provided in accordance with this subparagraph) for a hearing. Before issuing the order, the Administrator or the Secretary of the Army shall give to the person to be assessed a civil penalty written notice of the Administrator's or Secretary's proposal to issue such order and the opportunity to request, within thirty days of the date the notice is received by such person, a hearing on the proposed order. Such hearing shall not be subject to section 554 or 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.

"(B) The Administrator or the Secretary of the Army shall provide public notice of and reasonable opportunity to comment on any proposed assessment.

"(C) Any citizen who comments on a proposed assessment under subparagraph (B) shall be given notice of any hearing held under this subsection and of any order assessing a penalty. In any hearing held under subparagraph (A), such citizen shall have a reasonable opportunity to be heard and to present evidence. If no hearing is held prior to issuance of the order assessing the penalty, then upon presentation by such citizen, within thirty days of issuance of the order, of evidence that such order was inadequate or improper, the Administrator or the Secretary of the Army shall set aside such order immediately and provide a hearing in accordance with subparagraph (A) on the proposed order.

"(D) Any order issued under this subsection shall become final thirty days following its issuance unless an appeal is taken pursuant to paragraph (6) or the order is set aside pursuant to subparagraph (C).

"(4) Content of Order.—In determining the amount of a civil penalty, the Administrator or the Secretary of the Army shall take into account the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require.

"(5) Effect of Order.—(A) Action taken by the Administrator or the Secretary of the Army pursuant to this subsection shall not affect or limit the Administrator's or Secretary's authority to enforce any provision of this Act: *Provided, however,* That any violation with respect to which the Administrator or the Secretary of the Army has commenced and is diligently prosecuting an action under this subsection, or for which the Administrator or the Secretary of the Army has issued a final order not subject to further judicial review and the violator paid a penalty assessed under this subsection, shall not be the subject of a civil penalty action under section 309(d), section 311(b), or section 505 of this Act: *Provided further,* That the foregoing limitation on civil penalty actions under section 505 of this Act shall not apply with respect to any violation for which (i) a civil action under section 505(a)(1) of this Act has been filed prior to commencement of an action under this subsection, or (ii) a notice of violation under section 505(b)(1) of this Act has been given prior to commencement of an action under this subsection and an action under section 505(a)(1) of this Act is filed prior to 120 days after such notice is given.

"(B) Nothing in this subsection shall change the procedures now existing under other subsections of section 309 of this Act for issuance and enforcement of orders by the Administrator.

"(C) No action by the Administrator or the Secretary of the Army pursuant to this subsection shall affect any person's obligation to comply with any section of this Act or with the terms and conditions of any permit issued pursuant to section 402 or 404 of this Act.

"(6) Judicial Review.—Any person against whom a civil penalty order is issued or who commented on a proposed assessment pursuant to paragraph (3) may file an appeal of such order in the United States district court for the District of Columbia or in the district in which the violation is alleged to have occurred. This appeal may only be filed within the thirty-day period beginning on the date the civil penalty order is issued. Appellant shall simultaneously send a copy of the appeal by certified mail to the Administrator or the Secretary of the Army and to the Attorney General. The Administrator or the Secretary of the Army shall promptly file in such court a certified copy of the record on which the order was issued. The district court shall not set aside or remand such order unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion and shall not impose additional civil penalties for the same violation unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion.

"(7) Collection.—If any person fails to pay an assessment of a civil penalty—

"(A) after an order is final under paragraph (3), or

"(B) after a court in an action brought under paragraph (6) has entered a final judgment in favor of the Administrator or the Secretary of the Army,

the Administrator or the Secretary of the Army shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus costs, attorneys' fees, and interest at currently prevailing rates from the date of the final order or the date of such final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

"(8) Subpoena.—The Administrator or the Secretary of the Army may, in connection with administrative proceedings under this subsection, issue subpoenas compelling the attendance and testimony of witnesses and subpoenas duces tecum, and may request the Attorney General to bring an action to enforce any subpoena under this section. The district courts shall have jurisdiction to enforce such subpoenas and impose sanctions.".

(e) Section 309(c) of the Clean Water Act is amended to read as follows:

"(c)(1) Any person who (A) negligently violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(a)(3) and (b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, or who (B) negligently introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage, or, other than in compliance with all applicable Federal, State or local requirements or permits, causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State, shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both.

"(2) Any person who (A) knowingly violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(a)(3) and (b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, or who (B) knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage, or, other than in compliance with all applicable Federal, State or local requirements or permits, causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State, shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than three years, or by both.

"(3)(A) Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than fifteen years, or both. A defendant that is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than $1,000,000.

"(B) For the purpose of subparagraph (A) of this paragraph—

"(i) In determining whether a defendant who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury—

"(I) the person is responsible only for actual awareness or actual belief that he possessed; and

"(II) knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant:

Provided, That in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information.

"(ii) It is an affirmative defense to prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

"(I) an occupation, a business, or a profession; or

"(II) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent. The defendant may establish an affirmative defense under this subparagraph by a preponderance of the evidence.

"(iii) The term 'organization' means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

"(iv) The term 'serious bodily injury' means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

"(4) Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or by both.

"(5) If a conviction is for a violation of paragraph (1), (2), (3), or (4) of this subsection committed after a first conviction of such person under the same paragraph, the maximum punishment under the respective paragraph shall be doubled with respect to both fine and imprisonment.

"(6) For the purpose of paragraphs (1), (2), (3), and (4) the term 'person' shall mean, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.

"(7) For the purpose of paragraphs (1) and (2), the term 'hazardous substance' shall mean (A) any substance designated pursuant to section 311(b)(2)(A) of this Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of this Act, and (E) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.".

"(8) Whenever any action is brought under this section in a court of the United States, the plaintiff shall provide a copy of the complaint to the Attorney General of the United States and to the Administrator. No consent judgment shall be entered in an action brought under this section in which the United States is not a party prior to forty-five days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator.

"(9) The Secretary shall prepare and submit a report to the Congress, not later than December 1, 1987, which shall examine and analyze various enforcement mechanisms for use by the Secretary, including an administrative civil penalty mechanism. Such report shall also examine, in consultation with the Comptroller General, the efficacy of the Secretary's existing enforcement authorities, and shall make recommendations for improvements in their operation.".

PARTIAL NPDES PROGRAM APPROVAL

SEC. 110. (a) Section 402(b) of the Clean Water Act is amended by—

(1) inserting ", or part of a permit program in accordance with paragraph (10) of this subsection," immediately after "its own permit program" in the first full sentence; and

(2) adding at the end thereof the following new paragraph:

"(10) In the event a Governor submits a plan to administer part of a permit program, the Administrator may approve such plan upon a showing that—

"(A)(i) the plan provides for administration of permit program components which represent a significant and identifiable part of the State program authorized by this section; and

"(ii) the plan provides for and the State agrees to make all reasonable efforts to assume administration of the remainder of the program by a specified future date not to exceed five years from submission of the State's initial plan; or

"(B)(i) the plan provides for administration of a permit program for one or more discharge categories such as Federal facilities, municipal or industrial categories, or any other category of dischargers which represent a significant and identifiable part of the permit program in the State; and

"(ii) the plan covers all categories of discharges under the jurisdiction of the State agency or department responsible for administering the plan and represents a complete permit program for all categories of discharges contained in the plan. For purposes of the preceding sentence, 'a complete permit program,' means one for which adequate authority exists to carry out each of the activities listed in paragraphs (1) through (9) of this subsection.".

(b) Section 402(c)(1) of the Clean Water Act is amended by striking "as to those navigable waters" and inserting in lieu thereof "as to those activities and discharges".

(c) Section 402(c) of the Clean Water Act is amended by adding a new paragraph (4) as follows:

"(4) In the event a determination is made (A) by a State to return administration of the program to the Administrator or (B) by the Administrator to withdraw approval pursuant to paragraph (3) of this subsection, return of administration or withdrawal of approval may only be made of the entire program currently being administered by the State.".

JUDICIAL REVIEW AND AWARD OF FEES

SEC. 111. (a) Section 509(b)(1) of the Clean Water Act is amended by (1) striking the phrase "transacts such business" and inserting in lieu thereof, "transacts business which is directly affected by such action"; and (2) striking "ninety" and "ninetieth" and inserting in lieu thereof "one hundred and twenty" and "one hundred and twentieth", respectively.

(b) Section 509(b) of the Clean Water Act is amended by adding at the end thereof the following new paragraphs:

"(3)(A) If applications for review of the same agency action have been filed under paragraph (1) of this subsection in two or more Circuit Courts of Appeals of the United States and the Administrator has received written notice of the filing of one or more applications within thirty days or less after receiving written notice of the filing of the first application, then the Administrator shall promptly advise in writing the Administrative Office of the United States Courts that applications have been filed in two or more Circuit Courts of Appeals of the United States, and shall identify each court for which he has written notice that such applications have been filed within thirty days or less of receiving written notice of the filing of the first such application. Pursuant to a system of random selection devised for this purpose, the Administrative Office thereupon shall, within three business days of receiving such written notice from the Administrator, select the court in which the record shall be filed from among those identified by the Administrator. Upon notification of such selection, the Administrator shall promptly file the record in such court. For the purpose of review of agency action which has previously been remanded to the Administrator, the record shall be filed in the Circuit Court of Appeals of the United States which remanded such action.

"(B) Where applications have been filed under paragraph (1) of this subsection in two or more Circuit Courts of Appeals of the United States with respect to the same agency action and the record has been filed in one of such courts pursuant to paragraph (3)(A), the other courts in which such applications have been filed shall promptly transfer such applications to the Circuit Court of Appeals of the United States in which the record has been filed. Pending selection of a court pursuant to paragraph (3)(A), any court in which an application has been filed under paragraph (1) of this subsection may postpone the effective date of the agency action until fifteen days after the Administrative Office has selected the court in which the record shall be filed.

"(C) Any court in which an application with respect to any agency action has been filed under paragraph (1) of this subsection, including any court selected pursuant to paragraph (3)(A), may transfer such application to any other Circuit Court of Appeals of the United States for the convenience of the parties or otherwise in the interest of justice.

"(4) In any judicial proceeding under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party whenever it determines that such award is appropriate.".

(c) Section 505(d) of the Clean Water Act is amended by inserting "prevailing or substantially prevailing" before "party" in the first sentence thereof.

NONPOINT SOURCE POLLUTION

SEC. 112. (a) Title III of the Clean Water Act is amended by adding the following new section:

"NONPOINT SOURCE POLLUTION MANAGEMENT PROGRAM

"SEC. 319. (a)(1) Each State, by itself or in combination with adjacent States, shall, after notice and opportunity for public comment, submit to the Administrator, within eighteen months after the date of enactment of the Clean Water Act Amendments of 1985, a proposed nonpoint source pollution management program which shall—

"(A) identify those waters within its boundaries which without additional action to control nonpoint sources of pollution cannot reasonably be expected to attain or maintain (i) applicable water quality standards, or (ii) the goals and requirements of the Act;

"(B) designate categories or subcategories of nonpoint sources of pollutants or, where appropriate, particular nonpoint sources, that contribute significant pollution loadings to the waters identified under subparagraph (A);

"(C) identify best management practices which will be undertaken to reduce pollutant loadings resulting from each category, subcategory or particular nonpoint source designated under subparagraph (B), taking into account the impact of the proposed practice on ground water quality;

"(D) identify programs (including, as appropriate, nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) to achieve implementation of the best management practices by the categories, subcategories, and particular nonpoint sources designated under subparagraph (B);

"(E) include a schedule containing annual milestones for (i) utilization of the program implementation methods identified in subparagraph (D), and (ii) implementation of the best management practices identified in subparagraph (C) by the categories, subcategories, or particular nonpoint sources designated under subparagraph (B). Such schedule shall provide for utilization of the program implementation methods and implementation of best management practices at the earliest practicable date;

"(F)(i) include a statement from the attorney general of such State or States (for the attorney for those State water pollution control agencies which have independent legal counsel) that the laws of such State or States, as the case may be, provide adequate authority to carry out the described program, or what additional authorities would be necessary to do so, and (ii) if this statement identifies additional needed authorities, include a schedule and commitment by the State to seek such authorities as expeditiously as practicable; and

"(G) include an identification of Federal financial assistance programs and Federal development projects for which the State will review individual assistance applications or development projects for their effect on water quality pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983, to determine whether such assistance applications or development projects would be consistent with and further the purposes and objectives of the program prepared under this subsection. For the purposes of this paragraph, identification shall not be limited to the assistance programs or development projects subject to the Executive Order 12372 but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the State's nonpoint source pollution management program.

"(2) In developing the nonpoint source management program required by this section, the State (A) may rely upon information developed pursuant to sections 208, 303(e), 304(f), 305(b), and 314, and other information as appropriate, and (B) may utilize appropriate elements of the waste treatment management plans developed pursuant to section 208(b), to the extent such elements are consistent with and fulfill the requirements of this section.

"(3) In developing and implementing the management program described in this subsection, a State may make use of local agencies or organizations.

"(b)(1) Within six months of the date of receipt of a proposed nonpoint source management program, the Administrator shall, after notice and opportunity for public comment, make a determination whether the State's proposed management program meets the requirements of subsection (a)(1) of this section.

"(2) If the Administrator determines that the proposed management program does not meet the requirements of subsection (a)(1) of this section, he shall within six months of receipt of the proposed program notify the State of any revisions or modifications necessary to obtain approval. The State shall thereupon have an additional three months to submit its revised management program and the Administrator shall approve or disapprove such revised program within three months of receipt.

"(3) Pursuant to paragraph (1) or (2) of this subsection, the Administrator shall approve those State management programs that he determines meet the requirements of subsection (a)(1) of this section.

"(4) If the Administrator fails to approve the State management program pursuant to paragraph (1) of this subsection or fails to notify the State of necessary revisions pursuant to paragraph (2) of this subsection within six months of receipt of the State program, or if he fails to approve or disapprove the program pursuant to paragraph (2) of this subsection within three months of receipt of the revised program, the program shall be deemed to have been approved by the Administrator.

"(c) If a State fails to submit a nonpoint source pollution management program that the Administrator determines meets the requirements of subsection (a)(1) of this section, the Administrator shall notify such State, and within thirty months after the date of enactment of the Clean Water Act Amendments of 1985, after consultation with appropriate Federal and State agencies and other interested persons, carry out the requirements of subsections (a)(1) (A) and (B) of this section for such State. Upon completion of this requirement, the Administrator shall report to Congress on his actions pursuant to this section.

"(d)(1) The Administrator shall award grants, subject to such terms and conditions as the Administrator considers appropriate, to assist States in the implementation of management programs which have been approved pursuant to subsection (b) of this section. Such grants shall not exceed 75 per centum of the costs of implementing the program in any fiscal year and shall be made on condition that non-Federal sources provide at least 25 per centum of the costs that receive funding under this subsection.

"(2)(A) Two-thirds of the funds appropriated in any fiscal year for grants under this section shall be made available for allotment to the several States in accordance with the following table:

State	Percentage allotment
Alabama	1.56
Alaska	.50
Arizona	1.95
Arkansas	1.43
California	6.37
Colorado	2.19
Connecticut	.68
Delaware	.50
District of Columbia	.50
Florida	2.68
Georgia	2.04
Hawaii	.50
Idaho	1.20
Illinois	4.03
Indiana	2.07
Iowa	2.39
Kansas	2.78
Kentucky	1.32
Louisiana	1.56
Maine	.55
Maryland	1.03
Massachusetts	1.25
Michigan	2.67
Minnesota	2.43
Mississippi	1.40
Missouri	2.44
Montana	2.46
Nebraska	2.26
Nevada	1.78
New Hampshire	.50
New Jersey	1.62
New Mexico	1.93
New York	4.22
North Carolina	1.90
North Dakota	2.14
Ohio	3.14
Oklahoma	2.05
Oregon	1.75
Pennsylvania	2.97
Rhode Island	.50
South Carolina	1.09
South Dakota	1.94
Tennessee	1.50
Texas	8.08
Utah	1.36
Vermont	.50
Virginia	1.60
Washington	1.58
West Virginia	.60
Wisconsin	1.90
Wyoming	1.39
Guam	.10
Northern Marianas	.10
Pacific Trust Territories	.10
Puerto Rico	.72
Samoa	.10
Virgin Islands	.10
Total	100.00

"(B) One-third of the funds appropriated in any fiscal year for grants under this section shall be made available to the Administrator who shall make grants in response to applications from States if the Administrator determines such grants are necessary and appropriate to assist such States in—

"(i) controlling particularly difficult or serious nonpoint source pollution problems, including, but not limited to, problems resulting from mining activities;

"(ii) implementing innovative methods or practices for controlling nonpoint sources of pollution, including both regulatory or nonregulatory programs where the Administrator deems appropriate;

"(iii) controlling interstate nonpoint source pollution problems;

"(iv) assessing the relationship between nonpoint source pollution and ground water contamination; or

"(v) providing financial assistance for implementation by an Indian tribe, within the reservation, of an approved management program: *Provided*, That any such Indian tribe shall be subject to all terms and conditions of this section applying to a State. Financial assistance to any one reservation under this clause shall not exceed one-third of 1 per centum of the total amount appropriated for grants for each year.

"(3) The funds allotted to the States pursuant to paragraph (2)(A) of this subsection for a fiscal year shall remain available for obligation for the fiscal year for which appropriated. The amount of any such allotments not obligated by the end of such fiscal year and any unobligated funds remaining under paragraph (2)(B) of this subsection shall be reallotted by the Administrator for the next fiscal year on the basis of the table in paragraph (2)(A).

"(4) States may use funds from grants made pursuant to this section for financial assistance to persons only to the extent that such assistance is related to the costs of demonstration projects.

"(5) No grant shall be made to a State under this section unless the Administrator determines, on the basis of information provided by the State and from other relevant sources, that the State is implementing the program satisfactorily in terms of the requirements and objectives of this section.

"(6) No grant shall be made under this section to any State in any fiscal year in which the expenditure of non-Federal funds by such State for purposes comparable to the activities assisted by this section are less than the average level of such expenditures in the two fiscal years of such State next preceding the date of enactment of the Clean Water Act Amendments of 1985.

"(7) The Administrator may request such information, data, and reports as he may deem necessary to make the determination of continuing eligibility for grants under this section.

"(8) For the purpose of this section, there are authorized to be appropriated, to remain available until expended, $70,000,000 for the fiscal year ending September 30, 1986, $100,000,000 for the fiscal year ending September 30, 1987, and $130,000,000 for the fiscal year ending September 30, 1988.

"(e) Each State shall report to the Administrator on an annual basis concerning (1) its progress in meeting the schedule of milestones submitted pursuant to subsection (a)(1)(E) of this section, and (2) to the extent that appropriate information is available, reductions in nonpoint source pollutant loading and improvements in water quality resulting from implementation of the management program.

"(f) The Administrator shall—

"(1) transmit to the Office of Management and Budget and the appropriate Federal departments and agencies a list of those assistance programs and development projects identified by each State under subsection (a)(1)(G) for which individual assistance applications and projects will be reviewed pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983. Beginning not later than sixty days after receiving notification by the Administrator, each Federal department and agency shall modify existing regulations to allow States to review individual development projects and assistance applications under the identified Federal assistance programs and shall accommodate, according to the requirements and definitions of Executive Order 12372, as in effect on September 17, 1983, the concerns of the State regarding the consistency of such applications or projects with the State nonpoint source pollution management program;

"(2) collect and make available, through publications and other appropriate means, information pertaining to management practices and implementation methods, including, but not limited to, (A) information concerning the costs and relative efficiencies of best management practices for reducing nonpoint source pollution; and (B) available data concerning the relationship between water quality and implementation of various management practices to control nonpoint sources of pollution; and

"(3) submit to the Congress, within thirty-six months of enactment of the Clean Water Act Amendments of 1985, a report which on the basis of information submitted by the States pursuant to subsections (a) and (e) of this section, and other information as appropriate:

"(A) describes the management programs being implemented by the States by types and amount of affected waters, categories and subcategories of nonpoint sources, and types of best management practices being implemented;

"(B) describes the experiences of the States in adhering to schedules and implementing best management practices;

"(C) describes the amount and purpose of grants awarded pursuant to subsection (d) of this section;

"(D) identifies, to the extent that information is available, the progress made in reducing pollutant loads and improving water quality in the waters of the United States; and

"(E) indicates what further actions need to be taken to attain and maintain in those waters (i) applicable water quality standards and (ii) the goals and requirements of the Act.".

(b) Section 304(k)(1) of the Clean Water Act is amended by inserting after the word "Act" the following: "and nonpoint source pollution management programs approved under section 319 of this Act.".

(c) Section 205(j) of the Clean Water Act is amended by adding the following new paragraph:

"(5) In addition to the sums reserved under paragraph (1), the Administrator shall reserve each fiscal year for each State 1 per centum of the sums allotted and available for obligation to such State under this section for each fiscal year beginning on or after October 1, 1986, or $100,000, whichever is greater, for the purpose of carrying out section 319 of this Act. Sums so reserved in a State in any fiscal year for which such State does not request the use of such sums, to the extent such sums exceed $100,000, may be used by such State for other purposes under this title.".

NATIONAL ESTUARY PROGRAM

Sec. 113. Title III of the Clean Water Act is amended by adding at the end thereof the following new section:

"NATIONAL ESTUARY PROGRAM

"Sec. 320. (a)(1) Whenever the Administrator determines that the attainment and maintenance of the chemical, physical, and biological integrity of an estuary requires the interstate or international control of sources of pollution to supplement existing controls, the Administrator shall convene, for a period not to exceed five years, an estuarine management conference, to—

"(A) assess trends in water quality, natural resources, and uses of the estuary;

"(B) collect, characterize, and assess data on toxics, nutrients, and natural resources within the estuarine zone to identify the causes of environmental problems;

"(C) develop the relationship between the inplace loads and point and nonpoint loadings of pollutants to the estuarine zone and the potential uses of the zone, water quality, and natural resources;

"(D) develop a comprehensive conservation and management plan that recommends priority corrective actions and compliance schedules addressing point and nonpoint sources of pollution to restore and maintain the chemical, physical, and biological integrity of the estuary, including restoration and maintenance of water quality, a balanced indigenous population of shellfish, fish and wildlife, and recreational activities in the estuary, and assure that the designated uses of the estuary are protected;

"(E) develop plans for the coordinated implementation of the plan by the States as well as Federal and local agencies participating in the conference;

"(F) monitor the effectiveness of actions taken pursuant to the plan; and

"(G) review any Federal financial assistance program or federal development project subject to the requirements of Executive Order 12372, as in effect on September 17, 1983, to determine whether such assistance program or project would be consistent with and further the purposes and objectives of any plan prepared under this section. For purposes of this subparagraph, these programs and projects shall not be limited to the assistance programs or development projects subject to Executive Order 12372, but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of any plan developed pursuant to this section.

"(b) The members of a management conference convened under this section shall include, at a minimum, the Administrator and representatives of—

"(1) each State and foreign nation located in whole or in part in the estuarine zone of the estuary for which the conference is convened;

"(2) international, interstate, or regional agencies having jurisdiction over all or a significant part of the estuary;

"(3) each interested Federal agency, as determined appropriate by the Administrator;

"(4) local governments within the estuarine zone, as determined appropriate by the Administrator; and

"(5) affected industries, public and private educational institutions and the general public in the estuarine zone.

"(c) Prior to developing a comprehensive conservation and management plan under this section, the management conferees shall survey and use existing reports, data, and studies as well as local master or regional plans relating to the estuary that have been developed by or made available to Federal, interstate, international, State, or local agencies.

"(d)(1) Not later than ninety days after the completion of a conservation and management plan, the Administrator shall, if the plan satisfies the purposes of this section and the affected Governor or Governors concur, approve such plan.

"(2) Upon approval of a conservation and management plan under this section, funds authorized to be appropriated under titles II and VI and section 319 of this Act may be used in accordance with the applicable requirements of this Act, to assist States with the implementation of such plan.

"(e) There are authorized to be appropriated to the Administrator not to exceed $12,000,000 per fiscal year for each of the fiscal years 1986, 1987, 1988, and 1989, for:

"(1) expenses related to the administration of management conferences under this section, not to exceed 10 per centum of the amount appropriated under this paragraph;

"(2) grants to State, interstate or regional water pollution control agencies for research, surveys, studies, monitoring, modeling, and other technical work necessary for the development of a conservation and management plan under this section: *Provided*, That such grants shall not exceed 75 per centum of the costs of such technical work and shall be made on condition that non-Federal sources provide at least 25 per centum of the costs that receive funding under this paragraph; and

"(3) the costs of monitoring the implementation of a conservation and management plan. Such monitoring shall be done by the management conference or, in any case in which the conference has expired or been terminated, by the Administrator. The Administrator shall provide up to $5,000,000 per fiscal year of the sums authorized to be appropriated under this subsection to the Administrator of the National Oceanic and Atmospheric Administration to carry out tasks assigned under subsection (g).

"(f) Any State, interstate, or regional agency that receives a grant under subsection (e) shall report to the Administrator not later than eighteen months after receipt of such grant and biennially thereafter on the progress being made under this section.

"(g)(1) In order to determine the need to convene a management conference under this section or at the request of such a management conference, the Administrator shall coordinate and implement, through the National Marine Pollution Program Office and the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, as appropriate, for one or more estuarine zones—

"(A) a long-term program of trend assessment monitoring measuring variations in pollutant concentrations, marine ecology, and other physical or biological environmental parameter which may affect estuarine zones, to provide the Administrator the capacity to determine the potential and actual effects of alternative management strategies and measures;

"(B) a program of ecosystem assessment assisting in the development of (i) baseline studies which determine the state of estuarine zones and the effects of natural and anthropogenic changes, and (ii) predictive models capable of translating information on specific discharges or general pollutant loadings within estuarine zones into a set of probable effects on such zones;

"(C) a comprehensive water quality sampling program for the continuous monitoring of nutrients, chlorine, acid precipitation dissolved oxygen, and potentially toxic pollutants (including organic chemicals and metals) in estuarine zones, after consultation with interested State, local, interstate, or international agencies and review and analysis of all environmental sampling data presently collected from estuarine zones; and

"(D) a program of research to identify the movements of nutrients, sediments and pollutants through estuarine zones and the impact of nutrients, sediments, and pollutants on water quality, the ecosystem, and designated or potential uses of the estuarine zones.

"(2) The Administrator, in cooperation with the Administrator of the National Oceanic and Atmospheric Administration, shall submit to the Congress no less often than biennially a comprehensive report on the activities authorized under this subsection including—

"(A) a listing of priority monitoring and research needs;

"(B) an assessment of the state and health of the Nation's estuarine zones, to the extent evaluated under this subsection;

"(C) a discussion of pollution problems and trends in pollutant concentrations with a direct or indirect effect on water quality, the ecosystem, and designated or potential uses of each estuarine zone, to the extent evaluated under this subsection; and

"(D) an evaluation of pollution abatement activities and management measures so far implemented to determine the degree of improvement toward the objectives expressed in subsection (a)(1)(D) of this section.

"(h) For the purposes of this section, the terms 'estuary' and 'estuarine zone' shall have the same meanings such terms have in section 104(n)(4) of this Act, except that the term 'estuarine zone' shall include those portions of tributaries draining into the estuary up to the historic height of migration of anadromous fish or the historic head of tidal influence, whichever is higher.".

STORMWATER RUNOFF FROM OIL AND GAS OPERATIONS

SEC. 114. Section 402(l) of the Clean Water Act is amended by inserting "(1)" after "(l)" and by adding the following new paragraph:

"(2) The Administrator shall not require a permit under this section nor impose effluent limitations, nor shall the Administrator directly or indirectly require any State to require such a permit or impose such limitations, for discharges of stormwater runoff from oil or gas exploration, production, processing, or treatment operations (including transmission pumping stations), composed entirely of flows from conveyances or systems of conveyances (including pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and not contaminated with process wastes, toxic pollutants, hazardous substances in excess of reportable quantities, or oil or grease in excess of reportable quantities.".

ANTI-BACKSLIDING

SEC. 115. (a) Section 402 of the Clean Water Act is amended by adding the following new subsection:

"(n) In the case of effluent limitations established on the basis of subsection (a)(1)(B) of this section, a permit may not be renewed, reissued or modified solely on the basis of effluent guidelines promulgated under section 304(b) subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit. If the source has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, the limitations in the renewed, reissued or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance or modification). In the case of effluent limitations established on the basis of section 301(b)(1)(C) or section 303 (d) or (e), a permit may be renewed, reissued, or modified on the basis of subsequently revised waste load allocations under section 303(d) to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit only in compliance with section 303(d)(5).".

(b) Section 402(a)(1) of the Clean Water Act is amended by inserting "(A)" after "either" and by inserting "(B)" after "this Act, or".

(c) Section 303(d) of the Clean Water Act is amended by adding the following new paragraph:

"(5)(A) For waters identified in paragraph (1)(A) where the applicable water quality standard has not yet been attained, any effluent limitation based on a total maximum daily load or other waste load allocation established under this section may be revised only if (i) the cumulative effect of all such revised effluent limitations based on such total maximum daily load or waste load allocation will assure the attainment of such water quality standard, or (ii) the designated use which is not being attained is removed in accordance with regulations established under this section.

"(B) For waters identified in paragraph (1)(A) where the quality of such waters equals or exceeds levels necessary to protect the designated use for such waters, any effluent limitation based on a total maximum daily load or other waste load allocation established under this section, or other permitting standard, may be revised only if such revision is subject to and consistent with the antidegradation policy established under this section.".

STORMWATER DISCHARGES

SEC. 116. (a) Section 402 of the Clean Water Act is amended by adding the following new subsection:

"(o)(1) Following the date of enactment of the Clean Water Act Amendments of 1985 and prior to October 1, 1992, the Administrator or the State (in the case of a State with a permit program approved under section 402 of this Act) shall not require a permit under this section for discharges composed entirely of stormwater, other than (A) those associated with industrial activity or a municipal separate storm sewer, or (B) those for which the Administrator or the State determines that the stormwater discharge violates a water quality standard or is a significant contributor of pollutants to waters of the United States.

(2) Prior to October 1, 1988, the Administrator, in consultation with States with a permit program approved under section 402 of this Act, shall submit to the Congress the report of a study (i) to identify stormwater discharges or classes of stormwater discharges for which permits were not required pursuant to paragraph (1) of this subsection, and (ii) to determine, to the maximum extent practicable, the nature and extent of pollutants in such discharges. Prior to October 1, 1989, the Administrator, in consultation with States with a permit program approved pursuant to section 402 of this Act, shall submit to the Congress the report of a study setting forth procedures and methods to control stormwater discharges to the extent necessary to attain and maintain water quality standards.

SEWAGE SLUDGE

SEC. 117. (a) Section 405(d) of the Clean Water Act is amended by inserting "(1)" after "(d)", by striking "(1)", "(2)" and "(3)" and inserting in lieu thereof "(A)", "(B)" and "(C)", and by adding the following new paragraphs:

"(2)(A)(i) Not later than April 1, 1986, the Administrator shall identify those toxic pollutants which, on the basis of available information on their toxicity, persistence, concentration, mobility, or potential for exposure, may be present in sewage sludge in concentrations which may adversely affect public health or the environment, and propose regulations specifying acceptable management practices for sewage sludge containing each such toxic pollutant and establishing numerical limitations for each such pollutant for each use identified under paragraph (1)(A).

"(ii) Not later than March 1, 1987, and after opportunity for public hearing, the Administrator shall promulgate the regulations required by subparagraph (A)(i).

"(B)(i) Not later than February 1, 1987, the Administrator shall identify those toxic pollutants not identified under subparagraph (A)(i) which may be present in sewage sludge in concentrations which may adversely affect public health or the environment, and propose regulations specifying acceptable management practices for sewage sludge containing each such toxic pollutant and establishing numerical limitations for each pollutant for each such use identified under paragraph (1)(A).

"(ii) Not later than December 15, 1987, the Administrator shall promulgate the regulations required by subparagraph (B)(i).

"(C) The management practices and numerical criteria established under subparagraphs (A) and (B) shall be adequate to protect public health and the environment from any reasonably anticipated adverse effects of each pollutant. Such regulations shall require compliance no later than twelve months after their publication, unless such regulations require the construction of new pollution control technology, in which case the regulations shall require compliance as expeditiously as practicable but in no case later than two years from the date of their publication.

"(D) For purposes of this subparagraph, if, in the judgment of the Administrator, it is not feasible to prescribe or enforce a numerical limitation for a pollutant identified under this paragraph, the Administrator may instead promulgate a design, equipment, management practice, or operational standard, or combination thereof, which in the judgment of the Administrator is adequate to protect public health and the environment from any reasonably anticipated adverse effects of such pollutant.

"(E) Prior to the promulgation of the regulations required by subparagraphs (A) and (B), the Administrator shall impose conditions in permits issued to publicly owned treatment works under section 402 of this Act or take such other measures as the Administrator deems appropriate to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge.

"(F) Nothing in this section authorizes the establishment of any requirement or time for compliance which is less stringent than required by any other law.".

(b) Section 405(e) of the Clean Water Act is amended to read as follows:

"(e) The determination of the manner of disposal or use of sludge is a local determination, except that it shall be unlawful for any person to dispose of sludge from a publicly owned treatment works or any other treatment works treating primarily domestic sewage (but not including privately owned treatment works operated in conjunction with industrial manufacturing and processing facilities) for any use for which regulations have been established pursuant to subsection (d) of this section, except in accordance with such regulations.".

(c) Section 405 of the Clean Water Act is further amended by adding at the end thereof the following:

"(f)(1) Any permit issued under section 402 of this Act to a publicly owned treatment works or any other treatment works treating primarily domestic sewage (but not including privately owned treatment works operated in conjunction with industrial manufacturing and processing facilities) shall include requirements for the use and disposal of sludge that implement the regulations established pursuant to subsection (d) of this section, unless such requirements have been included in a permit issued under the appropriate provisions of subtitle C of the Solid Waste Disposal Act, part C of the Safe Drinking Water Act, the Marine Protection, Research and Sanctuaries Act of 1972, or the Clean Air Act, or under State permit programs approved by the Administrator, where the Administrator determines that such programs assure compliance with any applicable requirements of this section. Not later than December 15, 1985, the Administrator shall promulgate procedures for approval of State programs pursuant to this paragraph.

"(2) In the case of a treatment works described in paragraph (1) that is not subject to section 402 of this Act and to which none of the other above listed permit programs nor approved State permit authority apply, the Administrator may issue a permit to such treatment works solely to impose requirements for the use and disposal of sludge that implement the regulations established pursuant to subsection (d) of this section. The Administrator shall include in the permit appropriate requirements to assure compliance with the regulations established pursuant to subsection (d) of this section. The Administrator shall establish procedures for issuing permits pursuant to this paragraph.".

(d)(1) Section 308(a)(4) of the Clean Water Act is amended by inserting "405," before the phrase "and 504".

(2) Section 505(f) of the Clean Water Act is amended by striking "or" where it appears before "(6)", and inserting before the period a semicolon and the following: "or (7) a regulation under section 405(d) of this Act,".

(3) Section 509(b)(1)(E) of the Clean Water Act is amended by striking "or 306" and inserting in lieu thereof "306, or 405".

INTERSTATE DISPUTE RESOLUTION

SEC. 118. (a) Section 402(d)(2) of the Clean Water Act is amended by inserting "(A)" after "(2)", by striking "(A)" and "(B)" and inserting in lieu thereof "(i)" and "(ii)" respectively, and by adding the following subparagraph:

"(B) In the case of the failure of any State to accept the recommendations of another State whose waters may be affected by the issuance of a permit, submitted in accordance with subsection (b)(5), the Administrator shall determine within 90 days following written objection to the Administrator by the State whose recommendations were not accepted, whether any substantial violation of a water quality requirement (including any standard) of the affected State or adverse effect on public health of the affected State will result from the issuance of such permit. If the Administrator so determines, the Administrator shall object to the issuance of such permit or provide specific modifications to such permit. Any such determination shall be provided in writing to the affected State and such determination or such objection shall be reviewable in the appropriate Circuit Court of Appeals under section 509(b) of this Act as the issuance or denial of a permit under section 402.".

(b) Section 402(b)(1) of the Clean Water Act is amended by adding the following:

"(E) shall be reconsidered for termination or modification at any time a State other than that in which the source is located provides notice that the permitted discharge is causing a substantial violation of a water quality requirement (including any standard) of such State or adversely affecting the public health of such State and seeks a modification of such permit;".

(c) Section 511 of the Clean Water Act is amended by adding a new subsection (e) as follows:

"(e) Any State or municipality the water quality of which is adversely affected by pollutants from another State may petition the Administrator who, upon determining on the record after opportunity for Agency hearing pursuant to 5 U.S.C. 554, 556, and 557 that such pollution is causing a substantial violation of a water quality requirement (including any standard) of such State or adversely affecting the public health of such State, shall issue an order within 90 days restraining any person causing or contributing to such pollution or providing such other relief as is appropriate, taking into account the goals and requirements of this Act and other equitable considerations. In no case shall such order or other relief based solely on this subsection supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws. This subsection shall not apply in any case in which section 402(d)(2)(B) or section 402(b)(1)(F) is available, or section 402(d)(2)(B) or section 402(b)(1)(E) apply to any pollution which is subject to the Colorado River Basin Salinity Control Act, nor to any water pollution which results from emissions from mobile or stationary sources which are regulated under the Clean Air Act.".

PRESERVATION OF OTHER RIGHTS

SEC. 119. (a) Section 505(e) of the Clean Water Act is amended by inserting "(1)" after "(e)" and by adding the following new paragraphs:

"(2) Nothing in this Act shall affect or modify in any way the liabilities of any person under other Federal statutes for damages caused by noncompliance with any requirement of this Act or any permit issued under this Act.

"(3) In any case involving the application of State common or statutory law to an instance where a discharge of pollutants arising in another State is alleged to have an adverse effect on the public health or welfare or the attainment of any water quality requirement of such State or municipality, a State or municipality shall be considered a citizen of such State for the purpose of filing an action in, or seeking removal to, a Federal district court to section 1332 of title 28, United States Code.".

(b) The amendments made by this section shall not apply in any dispute involving claims of interstate water pollution, wherein a State or municipality is the defending party, which is pending as of the enactment of this Act (or has been finally adjudicated), and on which the Supreme Court of the United States has rendered a decision.

AD VALOREM TAX DEDICATION

SEC. 120. For the purposes of complying with section 204(b)(1) of the Clean Water Act, the ad valorem tax user charge system of the Town of Hampton, New Hampshire, shall be deemed to have been dedicated as of December 27, 1977. The Administrator of the Environmental Protection Agency shall review such ad valorem tax user charge system for compliance with the remaining requirements of section 204(b)(1) and related regulations of the Agency.

LIMITATION ON DISCHARGE OF RAW SEWAGE BY NEW YORK CITY

SEC. 121. (a)(1) If the wastewater treatment plant identified in the consent decree as the North River plant has not achieved advanced preliminary treatment as required under the terms of the consent decree by August 1, 1986, the city of New York shall not discharge raw sewage from the drainage area of such plant (as defined in the consent decree) into navigable waters after such date in an amount which is greater for any thirty-day period than an amount equal to thirty times the average daily amount of raw sewage discharged from such drainage area during the twelve-month period ending on the earlier of the date on which such plant becomes operational or March 15, 1986 (as determined by the Administrator of the Environmental Protection Agency), except as provided in subsection (b).

(2) If the wastewater treatment plant identified in the consent decree as the Red Hook plant has not achieved advanced preliminary treatment as required under the terms of the consent decree by August 1, 1987, the city of New York shall not discharge raw sewage from the drainage area of such plant (as defined in the consent decree) into navigable waters after such date in an amount which is greater for any thirty-day period than an amount equal to thirty times the average daily amount of raw sewage discharged from such drainage area during the twelve-month period ending on the earlier of the date on which such plant becomes operational or March 15, 1987 (as determined by the Administrator of the Environmental Protection Agency), except as provided in subsection (b).

(b)(1) In the event of any significant interruption in the operation of the North River plant or the Red Hook plant caused by an event described in subparagraph (A), (B), or (C) of paragraph (5) occurring after the applicable deadline established under subsection (a), the Administrator of the Environmental Protection Agency shall waive the limitation of subsection (a) with respect to such plant, but only to such extent and for such limited period of time as may be reasonably necessary for the city of New York to resume operation of such plant.

(2) In the event that the volume of precipitation occurring after the applicable deadline established under subsection (a) causes the discharge of raw sewage to exceed the limitation under subsection (a), the Administrator of the Environmental Protection Agency shall waive the limitation of subsection (a) with respect to either or both such plants, but only to such extent and for such limited period of time as the Administrator determines to be necessary to take into account the increased discharge caused by such volume of precipitation.

(3) In the event that an increase in discharges from the North River drainage area constituting a violation of subsection (a)(1) is due to a random or seasonal variation, and that any sewer hookup occurring, or permit for a sewer hookup granted, after July 31, 1986, is not responsible for such violation, the Administrator of the Environmental Protection Agency shall waive the limitation of subsection (a)(1), but only to such extent and for such limited period of time as the Administrator determines to be reasonably necessary to take into account such random or seasonal variation.

(4) In the event that an increase in discharges from the Red Hook drainage area constituting a violation of subsection (a)(2) is due to a random or seasonal variation, and that any sewer hookup occurring, or permit for a sewer hookup granted, after July 31, 1987, is not responsible for such violation, the Administrator of the Environmental Protection Agency shall waive the limitation of subsection (a)(2), but only to such extent and for such limited period of time as the Administrator determines to be reasonably necessary to take into account such random or seasonal variation.

(5) The Administrator of the Environmental Protection Agency shall extend either deadline under paragraph (1) or (2) of subsection (a) to such extent and for such limited period of time as may be reasonably required to take into account any—

(A) act of war,

(B) unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight, or

(C) other circumstances beyond the control of the city of New York, such circumstances not to include (i) the unavailability of Federal funds under section 201 of the Federal Water Pollution Control Act, (ii) the unavailability of funds from the city of

New York or the State of New York, or (iii) a policy decision made by the city of New York or the State of New York to delay the achievement of advanced preliminary treatment at the North River plant or Red Hook plant beyond the applicable deadline in subsection (a).

(c) Except as otherwise provided in subsection (b), any violation of subsection (a) shall be considered to be a violation of section 301 of the Federal Water Pollution Control Act, and all provisions of such Act relating to violations of such section 301 shall apply.

(d) For purposes of this section, the "consent decree" is the consent decree entered into by the Environmental Protection Agency, the city of New York, and the State of New York, on December 30, 1982, relating to construction and operation of the North River and Red Hook wastewater treatment plants.

(e) The Administrator of the Environmental Protection Agency shall work with the city of New York to eliminate the discharge of raw sewage by such city at the earliest practicable date.

(f) Nothing in this section shall be construed as modifying the terms of the consent decree.

(g) It is the sense of the Congress that the Administrator of the Environmental Protection Agency should not agree to any further modification of the consent decree with respect to the schedule for achieving advanced preliminary treatment.

(h)(1) The provisions of this section shall remain in effect with respect to the North River drainage area until such time as the North River plant has achieved advanced preliminary treatment (as defined in the consent decree) for a period of six consecutive months.

(2) The provisions of this section shall remain in effect with respect to the Red Hook drainage area until such time as the Red Hook plant has achieved advanced preliminary treatment (as defined in the consent decree) for a period of six consecutive months.

(i) The Administrator of the Environmental Protection Agency shall promptly establish and carry out a program for the monitoring activities which may be required under subsection (a). The Administrator of the Environmental Protection Agency shall establish the methodologies, data base, and any other information required for making determinations under subsection (b) for the North River drainage area (as defined in the consent decree) by July 31, 1986, unless the requirements of subsection (h)(1) have been satisfied, and for the Red Hook drainage area (as defined by the consent decree) by July 31, 1987, unless the requirements of subsection (h)(2) have been satisfied. In carrying out such program, if the Administrator finds that a violation of subsection (a) has occurred, the Administrator shall also determine, within thirty days after such finding, whether a provision of subsection (b) applies. If the Administrator requires information from the city of New York in order to determine whether a provision of subsection (b) applies, the Administrator shall request such information. If the city of New York does not supply the information requested by the Administrator, the Administrator shall determine that subsection (b) does not apply. The city of New York shall be responsible only for such expenses as are necessary to provide such requested information. Enforcement action pursuant to subsection (c) shall be commenced at the end of such thirty days unless a provision of subsection (b) applies.

CHESAPEAKE BAY

SEC. 122. Title I of the Clean Water Act is amended by adding at the end thereof the following new section:

"CHESAPEAKE BAY

"SEC. 117. (a) The Administrator shall continue the Chesapeake Bay Program and shall establish and maintain in the Environmental Protection Agency an Office, Division, or Branch of Chesapeake Bay Programs to—

"(1) collect and make available, through publications and other appropriate means, the results of and other information pertaining to research and other activities that address the environmental quality of the Chesapeake Bay (hereinafter 'the Bay');

"(2) coordinate all Federal research projects pertaining to the Bay;

"(3) conduct research to determine the impact of sediment deposition in the Bay and to identify the sources, rates, routes, and distribution patterns of such sediment deposition; and

"(4) conduct research on the impact of natural and man-induced environmental changes on the living resources of the Bay and the relationships between such changes. Particular emphasis shall be placed on researching the impact of pollutant loadings of nutrients, chlorine, acid precipitation, dissolved oxygen, and toxic pollutants, including organic chemicals and heavy metals. Special attention shall be given to the impact of such changes on the striped bass.

"(b)(1) The Administrator shall, at the request of the Governor of a State affected by the interstate management plan developed pursuant to the Chesapeake Bay Program (hereinafter 'the plan'), make a grant for the purpose of implementing the management mechanisms contained in the plan if such State has, within one year after the date of enactment of the Clean Water Act Amendments of 1985, approved and committed to implement all or substantially all aspects of the plan. Payments for such purpose may be made to the States as hereinafter provided, subject to such terms and conditions as the Administrator considers appropriate.

"(2) A State or combination of States may elect to avail itself of the benefits of this subsection by submitting to the Administrator a comprehensive proposal to implement management mechanisms contained in the plan which shall include (A) a description of proposed abatement actions which the State commits to take within a specified time period to reduce pollution in the Bay and to meet applicable water quality standards, and (B) the estimated cost of the abatement actions proposed to be taken during the next fiscal year. If the Administrator finds that such proposal is consistent with the national policies set forth in section 101(a) of this Act and will contribute to the achievement of the national goals set forth in section 101(a) of this Act he shall approve such proposal and shall finance the costs of implementing segments of such proposal; except that Federal grants under this subsection shall not exceed 55 per centum of the costs of implementing the plan in any fiscal year and shall be made on condition that non-Federal sources provide the remainder of the cost of implementing the plan during such fiscal year.

"(3) Administrative costs in the form of salaries, overhead or indirect costs for services provided and charged against programs or projects supported by funds made available under this subsection shall not exceed in any one fiscal year 10 per centum of the annual Federal grant made to a State under this subsection.

"(c) Any State or combination of States that receives a grant under subsection (b) shall, within eighteen months after the date of receipt of a Federal grant under subsection (b) and biennially thereafter, report in conjunction with the Administrator to the Congress on progress made in implementing the interstate management plan developed pursuant to the Chesapeake Bay Program.

"(d) There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purposes of this section:

"(1) $3,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1988, to carry out subsection (a); and

"(2) $10,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1988, to carry out subsection (b).".

GREAT LAKES

Sec. 123. (a) Title I of the Clean Water Act is further amended by adding the following new section:

"GREAT LAKES

"Sec. 118. (a) Definitions.—For the purposes of this section, the term—

"(1) 'Agency' means the Environmental Protection Agency;

"(2) 'Great Lakes' means Lake Ontario, Lake Erie, Lake Huron (including Lake St. Clair), Lake Michigan, and Lake Superior, and the connecting channels (Saint Mary's River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian Border);

"(3) 'Great Lakes System' means all the streams, rivers, lakes, and other bodies of water within the drainage basin of the Great Lakes;

"(4) 'Program Office' means the Great Lakes National Progam Office established by this section; and

"(5) 'Research Office' means the Great Lakes Research Office established by subsection (d).

"(b) Great Lakes National Program Office.—The Great Lakes National Program Office (previously established by the Administrator) is hereby established within the Agency. The Program Office shall be headed by a Director who, by reason of management experience and technical expertise relating to the Great Lakes, is highly qualified to direct the development of programs and plans on a variety of Great Lakes issues. The Great Lakes National Program Office shall be located in a Great Lakes State.

"(c) Great Lakes Management.—(1) The Program Office shall—

"(A) in cooperation with appropriate Federal, State, tribal, and international agencies, and in accordance with section 101(e) of this Act, develop and implement specific action plans to carry out the responsibilities of the United States under the Great Lakes Water Quality Agreement of 1978;

"(B) establish a Great Lakes system-wide surveillance network to monitor the water quality of the Great Lakes, with specific emphasis on the monitoring of toxic pollutants; and

"(C) serve as the liaison with, and provide information to, the Canadian members of the International Joint Commission and the Canadian counterpart to the Agency.

"(2) The Program Office shall develop, in consultation with the states, a five-year plan and program for reducing the amount of nutrients introduced into the Great Lakes. Such program shall incorporate any management program for reducing nutrient runoff from nonpoint sources established under section 319 of this Act and shall include a program for monitoring nutrient runoff into, and ambient levels in, the Great Lakes.

"(3) The Program Office shall carry out a five year study and demonstration projects relating to the control and removal of toxic pollutants in the Great Lakes, with emphasis on the removal of toxic pollutants from bottom sediments.

"(4) To the extent practicable, the Agency's annual budget submission to Congress, shall include a funding request for the Program Office as a separate budget line item.

"(5) Within ninety days after the end of each fiscal year, the Administrator shall submit to the Congress a comprehensive report which—

"(A) describes the achievements in the preceding fiscal year in implementing the Great Lakes Water Quality Agreement of 1978 and shows by categories (including judicial enforcement, research, State cooperative efforts, and general administration) initiatives in such preceding fiscal year;

"(B) describes the progress made in such preceding fiscal year in implementing the system of surveillance of the water quality in the Great Lakes system, including the monitoring of groundwater and sediment, with particular reference to toxic pollutants;

"(C) describes the long-term prospects for improving the condition of the Great Lakes; and

"(D) provides a comprehensive assessment of the planned efforts to be pursued in the succeeding fiscal year for implementing the Great Lakes Water Quality Agreement of 1978. The assessment shall show by categories the amount anticipated to be expended on Great Lakes water quality initiatives in the fiscal year to which the assessment relates. The assessment shall also include a report of current programs administered by other Federal agencies which make available resources to the Great Lakes management efforts.

"(d) Great Lakes Research.—

"(1) There is established within the National Oceanic and Atmospheric Administration the Great Lakes Research Office.

"(2) the Research Office shall identify issues relating to the Great Lakes resources on which research is needed. The Research Office shall submit a report on such issues prior to the end of each fiscal year which shall identify any changes in the Great Lakes system with respect to such issues.

"(3) The Research Office shall identify and inventory Federal, State, university, and tribal environmental research programs, and to the extent feasible, those of private organization and other nations, relating to the Great Lakes system, and shall update that inventory every four years.

"(4) The Research Office shall establish a Great Lakes research exchange for the purpose of facilitating the rapid identification, acquisition, retrieval, dissemination, and use of information concerning research projects which are on-going or completed and which affect the Great Lakes System.

"(5) The Research Office shall develop, in cooperation with the Program Office, a comprehensive environmental research program and data base for the Great Lakes System. The data base shall include, but not be limited to, data relating to water quality, fisheries, and biota.

"(6) The Research Office shall conduct, through the Great Lakes Environmental Research Laboratory, the National Sea Grant College Program, and other Federal laborites, and the private sector, appropriate research and monitoring activities which address priority issues and current needs relating to the Great Lakes.

"(7) The Great Lakes Research Office shall be located in a Great Lakes State.

"(e) Research and Management Coordination.—

"(1) Prior to October 1 of each year, the Program Office and the Research Office shall prepare a joint research plan for the fiscal year which begins the following calendar year.

"(2) Each plan prepared under paragraph (1) shall—

"(A) identify all proposed research dedicated to activities conducted under the Great Lakes Water quality Agreement of 1978;

"(B) include the Agency's assessment of priorities for research needed to fulfill the terms of such agreement; and

"(C) identify all proposed research that may be used to develop a comprehensive environmental data base for the Great Lakes System and establish priorities for development of such data base.

"(f) Interagency Cooperation.—The head of each department, agency, or other instrumentality of the Federal Government which is engaged in, is concerned with, or has authority over programs relating to research, monitoring, and planning to maintain, enhance, preserve, or rehabilitate the environmental quality and natural resources of the Great Lakes, including the Chief of Engineers of the Army, the Chief of the Soil Conservation Service, the Commandant of the Coast Guard, the Director of the Fish and Wildlife Service, and the Administrator of the National Oceanic and Atmospheric Administration shall submit an annual report to the Administrator with respect to the activities of that agency or office affecting compliance with the Great Lakes Water Quality Agreement of 1978.

"(g) Relationship to Existing Federal and State Laws and International Treaties.—Nothing contained in this section shall be construed to affect the jurisdiction, powers, or prerogatives of any department, agency, or officer of the Federal Government or of any State government, or of any tribe, nor any powers, jurisdiction, or prerogatives of international bodies created by treaty with authority relating to the Great Lakes.

"(h) Authorizations of Great Lakes Appropriations.—There are authorized to be appropriated to carry out this section not to exceed $10,000,000 per fiscal year for the fiscal years 1986, 1987, 1988, 1989 and 1990. Of such amounts as are appropriated each fiscal year—

"(1) 50 per centum shall be used for the Great Lakes National Program Office demonstration projects on the feasibility of controlling and removing toxic pollutants;

"(2) 7 per centum shall be used for the Great Lakes National Program Office's program of nutrient monitoring; and

"(3) 30 per centum shall be used for the Great Lakes Research Office.".

(b) Section 517 of the Clean Water Act is amended by inserting "118," immediately after "115".

CLEAN LAKES

Sec. 124. Section 314(a) of the Clean Water Act is amended to read as follows:

"(a)(1) Each State shall prepare a report on a biennial basis which shall include—

"(A) an identification and classification according to eutrophic condition of all publicly owned lakes in such State;

"(B) a list and description of those publicly owned lakes for which uses are known to be impaired, including those lakes which are known to not meet applicable water quality standards, or which require implementation of protection programs to maintain compliance with applicable standards; and

"(C) a description of the State programs and methods to control sources of pollution of lakes and protect the quality of lakes.

"(2) The report provided for in paragraph (1) shall be included in the report required under section 305(b) of this Act.

"(3) A State must submit a report in accord with paragraph (1) in order to receive a grant under this section.".

LAKE PEND OREILLE STUDY

Sec. 125. The Administrator shall conduct a comprehensive study of the causes of increasing pollution in Lake Pend Oreille and its tributaries. In such study, the Administrator shall attempt to identify any upstream or local permitted or other discharges and the source of such discharges. In conducting this study, the Administrator should take into account any previous studies that will assist in carrying out the provisions of this subsection, and report to Congress the findings and recommendations of the study.

CONSTRUCTION AND OPERATION OF LOG TRANSFER FACILITIES

Sec. 126. (a) Not later than October 12, 1985, the Administrator and the Secretary of the Army shall enter into an agreement to designate a lead agency and to process permits required under section 402 and section 404 of the Clean Water Act, where both such sections apply, for discharges associated with the construction and operation of log transfer facilities.

(b) The requirements of sections 301(a) and 402(a) of the Clean Water Act shall be stayed until October 12, 1985, or until an agreement is entered into under subsection (a), whichever is earlier,—for discharge associated with such facilities, except discharges of dredged or fill material.

(c) Such agreement shall be developed to assure that, to the maximum extent practicable, duplication, needless paperwork and delay in the issuance of permits, and inequitable enforcement between and among facilities in different States, shall be eliminated.

(d) Where both sections 402 and 404 of that Act apply, log transfer facilities that have received a permit under section 404 of that Act prior to the date of enactment of this section shall not be required to submit a new application for a permit under section 402 of this Act. If the Administrator determines that the terms of an existing permit under section 404 of that Act satisfies the applicable requirements of sections 301, 302, 306, 307, 308, and 403 of that Act, a separate application for a permit under section 402 shall not be required. In any case where the

Administrator demonstrates, after an opportunity for a hearing, that the terms of an existing, permit under section 404 of that Act do not satisfy the applicable requirements of sections 301, 302, 306, 307, 308, and 403 of that Act, modifications to the existing permit under section 404 of that Act to incorporate such applicable requirements shall be issued by the Administrator as an alternative to issuance of a separate new permit under section 402 of that Act.

(e) For the purpose of this section, the term "log transfer facility" means a facility which is constructed in whole or in part in waters of the United States, and which is utilized for the purpose of transferring commercially harvested logs to or from a vessel or log raft, including the formation of a log raft.

TITLE II—CONSTRUCTION GRANT AMENDMENTS

CONSTRUCTION GRANT AUTHORIZATION

SEC. 201. (a) Section 207 of the Clean Water Act is amended by striking out the period at the end thereof and adding the following: "; and to carry out this title, other than sections 206(e), 208, and 209, subject to such amounts as are provided in appropriation Acts, for each of the fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1988, not to exceed $2,400,000,000; and for each of the fiscal years ending September 30, 1989, and September 30 1990 not to exceed $1,200,000,000.".

(b) Section 205(e) of the Clean Water Act is amended by striking ", 1979, 1980, 1981, 1982, 1983, 1984, and 1985" in the first and second sentences and inserting in each place in lieu thereof "through 1994".

ALLOCATION

SEC. 202. Section 205(c) of the Clean Water Act is amended by adding the following new paragraphs:

"(3) Sums authorized to be appropriated pursuant to section 207 for the fiscal years 1986, 1987, and 1988 shall be allotted for each such year by the Administrator not later than the tenth day which begins after the date of enactment of the Clean Water Act Amendments of 1985. Sums authorized for such fiscal years shall be allotted in accordance with the following table:

States:	
Alabama	.012442
Alaska	.007321
Arizona	.012442
Arkansas	.008002
California	.061966
Colorado	.009785
Connecticut	.012442
Delaware	.005001
District of Columbia	.005958
Florida	.044973
Georgia	.014649
Hawaii	.007440
Idaho	.005958
Illinois	.039186
Indiana	.020001
Iowa	.012614
Kansas	.011041
Kentucky	.014975
Louisiana	.014314
Maine	.009346
Maryland	.020955
Massachusetts	.036028
Michigan	.037255
Minnesota	.015925
Mississippi	.012442
Missouri	.025305
Montana	.005411
Nebraska	.006257
Nevada	.005958
New Hampshire	.012442
New Jersey	.048642
New Mexico	.005958
New York	.096132
North Carolina	.016094
North Dakota	.004658
Ohio	.048776
Oklahoma	.009882
Oregon	.011794
Pennsylvania	.034320
Rhode Island	.007428
South Carolina	.013337
South Dakota	.005958
Tennessee	.016597
Texas	.053634
Utah	.006445
Vermont	.005958
Virginia	.017732
Washington	.020533
West Virginia	.013507
Wisconsin	.023423
Wyoming	.005359
American Samoa	.000778
Guam	.000564
Northern Marianas	.000531
Puerto Rico	.012582
Pacific Trust Territory	.001403
Virgin Islands	.000462

"(4) Sums authorized to be appropriated pursuant to section 207 for the fiscal years 1989 and 1990 shall be allotted for each such year by the Administrator not later than the tenth day which begins after the date of enactment of the Clean Water Act Amendments of 1985. Sums authorized for such fiscal years shall be alloted in accordance with the following table:

States:	
Alabama	.012500
Alaska	.007563
Arizona	.012500
Arkansas	.011714
California	.058321
Colorado	.010503
Connecticut	.012500
Delaware	.005801
District of Columbia	.009172
Florida	.045181
Georgia	.014570
Hawaii	.007440
Idaho	.007272
Illinois	.036881
Indiana	.019653
Iowa	.012672
Kansas	.012337
Kentucky	.015044
Louisiana	.014380
Maine	.009772
Maryland	.019722
Massachusetts	.036195
Michigan	.035063
Minnesota	.014988
Mississippi	.012500
Missouri	.025422
Montana	.005411
Nebraska	.007467
Nevada	.006805
New Hampshire	.012500
New Jersey	.048867
New Mexico	.006814
New York	.090478
North Carolina	.016168
North Dakota	.004658
Ohio	.045906
Oklahoma	.012223
Oregon	.011794
Pennsylvania	.032302
Rhode Island	.007428
South Carolina	.013399
South Dakota	.006400

Tennessee	.016674
Texas	.053882
Utah	.012486
Vermont	.006581
Virginia	.016689
Washington	.028665
West Virginia	.012712
Wisconsin	.022322
Wyoming	.005359
Samoa	.000732
Guam	.000567
Northern Marianas	.000533
Puerto Rico	.012640
Pacific Trust Territories	.001409
Virgin Islands	.000464".

CHICAGO TUNNEL AND RESERVOIR PROJECT

Sec. 203. Section 201(g)(1) of the Clean Water Act is amended by adding the following sentence: "The Chicago tunnel and reservoir project may receive grants under the previous sentence without regard to the limitation contained therein, if the Administrator determines that such project meets the cost-effectiveness requirements of sections 217 and 218 without any redesign or reconstruction, and the Governor of the affected State demonstrates to the satisfaction of the Administrator the water quality benefits of such project.".

ELIGIBILITIES AFTER 1990

Sec. 204. (a) Section 202(a)(1) of the Clean Water Act is amended by striking out the period at the end thereof and adding the following: ", for any such grants made before October 1, 1990.".

(b) Section 204(c) of the Clean Water Act is amended by inserting "awarded a grant before October 1, 1990," after the words "such facility and interceptors".

(c) Section 205(g)(1) of the Clean Water Act is amended by striking "October 1, 1985" and inserting in lieu thereof "October 1, 1994".

DESIGN/BUILD PROJECTS

Sec. 205. Section 203 of the Clean Water Act is amended by adding at the end thereof the following new subsection:

"(f)(1) An applicant from a State allowing use of this subsection who proposes to construct waste water treatment works may enter into an agreement with the Administrator under this subsection providing for the preparation of construction plans and specifications and the erection of such treatment works, in lieu of proceeding under the other provisions of this section.

"(2) Agreements under this subsection shall be limited to projects which are, under an approved facility plan:

"(A) treatment works that have an estimated total cost of $8,000,000 or less; and

"(B) any of the following types of waste water treatment systems: aerated lagoons, trickling filters, stabilization ponds, land application systems, sand filters, and subsurface disposal systems.

"(3) An agreement entered into under this subsection shall—

"(A) set forth an amount agreed to as the maximum Federal contribution to the project, based upon a competitively bid document of basic design data and applicable standard construction specifications and a determination of the federally eligible costs of the project at the applicable Federal share under section 202 of this Act;

"(B) set forth dates for the start and completion of construction of the treatment works by the applicant and a schedule of payments of the Federal contribution to the project;

"(C) contain assurances by the applicant that (i) engineering and management assistance will be provided to manage the project; (ii) the proposed treatment works will be an operable unit and will meet all the requirements of this title; and (iii) not later than one year after the date specified as the date of completion of construction of the treatment works, the treatment works will be operating so as to meet the requirements of any applicable permit for such treatment works under section 402 of this Act;

"(D) require the applicant to obtain a bond from the contractor in an amount determined necessary by the Administrator to protect the Federal interest in the project; and

"(E) contain such other terms and conditions as are necessary to assure compliance with this title (except as provided in paragraph (4) of this subsection).

"(4) Subsections (a), (b), and (c) of this section shall not apply to grants made pursuant to this subsection.

"(5) The Administrator shall reserve a portion of the grant to assure contract compliance until final project approval as defined by the Administrator. If the amount agreed to under paragraph (3)(A) exceeds the cost of designing and constructing the treatment works, the Administrator shall reallot the amount of the excess to the State in which such treatment works are located for the fiscal year in which such audit is completed.

"(6) Not more than 25 percent of the amount allotted to a State for any fiscal year under section 205 of this Act shall be obligated for grants pursuant to this subsection.

"(7) The Administrator will determine an allowance for facilities planning for projects constructed under this subsection in accordance with section 201(l).

"(8) In any case in which the recipient of a grant made pursuant to this subsection does not comply with the terms of the agreement entered into under paragraph (3), the Administrator is authorized to take such action as may be necessary to recover the appropriate amount of the Federal contribution to the project.

"(9) A recipient of a grant made pursuant to this subsection shall not be eligible for any other grants under this title.".

INNOVATIVE AND ALTERNATIVE PROJECTS

Sec. 206. Section 205(i) of the Clean Water Act is amended to read as follows:

"(i) Not less than one-half of 1 per centum of funds allotted to a State for each of the fiscal years ending September 30, 1979, through September 30, 1990, under subsection (c) of this section shall be expended only for increasing the Federal share of grants for construction of treatment works utilizing innovative processes and techniques pursuant to section 202(a)(2) of this Act. Including the expenditures authorized by the preceding sentence, a total of 2 per centum of the funds allotted to a State for each of the fiscal years ending September 30, 1979, and September 30, 1980, and 3 per centum of the funds allotted to a State for the fiscal year ending September 30, 1981, under subsection (c) of this section shall be expended only for increasing grants for construction of treatment works pursuant to section 202(a)(2) of this Act. Including the expenditures authorized by the first sentence of this subsection, a total (as determined by the Governor of the State) of not less than 4 per centum nor more than 7½ per centum of the funds allotted to such

State under subsection (c) of this section for each of the fiscal years ending September 30, 1982, through September 30, 1990, shall be expended only for increasing the Federal share of grants for construction of treatment works pursuant to section 202(a)(2) of this Act.".

MARINE CSO'S AND ESTUARIES

SEC. 207. Section 205 of the Clean Water Act is amended by adding the following new subsection:

"(l) The Administrator shall reserve each fiscal year beginning after September 30, 1985, 1 per centum (during fiscal years 1986, 1987, and 1988) or 1¼ percentum (during fiscal years 1989 and 1990) of the sums appropriated under section 207, prior to allotment among the States under subsection (c) of this section. Of the sums reserved under this subsection, two-thirds shall be available to address water quality problems of marine bays and estuaries subject to lower levels of water quality due to the impacts of discharges from combined storm water and sanitary sewer overflows from adjacent urban complexes, and one-third shall be available for the implementation of section 320 of this Act. Sums so reserved shall be subject to the period of availability for obligation established under subsection (d) of this section.".

INDIAN TRIBES

SEC. 208. (a) Title II of the Clean Water Act is amended by adding the following new section:

"INDIAN TRIBES

"SEC. 220. (a) The Administrator, in cooperation with the Director of the Indian Health Service, shall assess the need for sewage treatment works to serve Indian tribes, the degree to which such needs will be met through funds allotted to States under section 205 of this Act and priority lists in accordance with section 216 of this Act, and any obstacles which prevent such needs from being met. The Administrator shall submit a report to the Congress for such assessment no later than one year after the enactment of the Clean Water Act Amendments of 1985.

"(b) Beginning with fiscal year 1987, the Administrator is authorized to reserve each fiscal year up to one-half of one per centum of the sums appropriated under section 207, prior to allotment among the States under section 205(e), based on the determination of unmet needs reported under subsection (a). Sums reserved under this subsection shall be available for grants to provide sewage treatment works to serve Indian tribes.

"(c) The Administrator is authorized to make special provision for the treatment of Indian tribes under this title, including the treatment of Indian tribes as States to the degree necessary to carry out the purposes of this section. Such special provision may include the direct provision of funds reserved under subsection (b) to the governing bodies of Indian tribes, and the determination of priorities by Indian tribes, where not determined by the Administrator in cooperation with the Director of the Indian Health Service. The Administrator is authorized to reduce the non-Federal share otherwise required under section 202 with respect to Indian tribes, as determined by the Administrator in cooperation with the Director of the Indian Health Service.".

(b) Section 502 of the Clean Water Act is amended by adding the following new paragraph:

"(20) the term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community (including any Alaska Native village, as defined in section 113(g), but not including any Alaska Native regional or village corporation) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.".

STATE WATER POLLUTION CONTROL REVOLVING FUNDS

SEC. 208. The Clean Water Act is amended by adding at the end thereof the following new title:

"TITLE VI—GRANTS FOR WATER POLLUTION CONTROL REVOLVING FUNDS

"AUTHORIZATION, ALLOTMENT, AWARD, AND PAYMENT

"SEC. 601. (a) There are hereby authorized to be appropriated the following sums to carry out the purposes of this title:

"(1) $1,200,000,000 per fiscal year for the fiscal years 1989 and 1990;

"(2) $2,400,000,000 for the fiscal year 1991;

"(3) $1,800,000,000 for the fiscal year 1992;

"(4) $1,200,000,000 for the fiscal year 1993; and

"(5) $600,000,000 for the fiscal year 1994.

"(b) For fiscal years 1989 and 1990, sums appropriated to carry out this title for each fiscal year shall be allotted by the Administrator in accordance with section 205(c) of this Act.

"(c) Sums allotted to the States for a fiscal year shall be available for a grant award under subsection (d) during the fiscal year for which authorized. The amount of any allotment not obligated by the end of such fiscal year shall be immediately reallotted by the Administrator on the basis of the same ratio as is applicable to sums allotted under title II of this Act for the next fiscal year, except that none of the funds reallotted by the Administrator will be allotted to any State which failed to obligate any of the funds being reallotted.

"(d) If a State has entered into a grant agreement with the Administrator as provided in section 602 of this title, the Administrator is authorized to make a capitalization grant to the State from funds available for obligation under this title.

"(e) From funds obligated for a given fiscal year pursuant to subsection (d) of this section, quarterly installment payments shall be made in accordance with the schedule of payments established under section 602(b)(2) of this title.

"(f) If the Administrator determines that a State has not complied with agreements under section 602, or requirements of this title, the Administrator shall notify the State of such noncompliance and the necessary corrective action. If the State does not take such corrective action by the sixtieth day after the date the State receives notice, the Administrator shall withhold additional payments to the State until the Administrator is satisfied that the State has taken the necessary corrective action.

"(g) If the Administrator is not satisfied that adequate corrective actions have been taken by the State within twelve months of the notice provided under subsection (f) of this section, the payments withheld by the Administrator shall be made available for reallotment under subsection (c) of this section.

"CAPITALIZATION GRANT AGREEMENTS WITH STATES

"Sec. 602. (a) To receive a capitalization grant under this title, a State shall enter into an agreement with the Administrator which shall include but not be limited to the specifications set forth in subsection (b) of this section.

"(b) The Administrator shall enter into an agreement with a State only after the State has established to the satisfaction of the Administrator that—

"(1) the State has established a Water Pollution Control Revolving Fund, as defined in section 603 of this title;

"(2) the State has agreed to accept grant payments under this title in accordance with a payment schedule established by the Administrator, and has agreed to deposit all such payments in the dedicated revolving fund;

"(3) the State has deposited in the fund or has agreed to deposit in the fund, from State moneys, an amount equal to at least 15 per centum of the total of all capitalization grants, so that such necessary matching deposits are made no later than the date of each grant payment under the provisions of paragraph (2) of this subsection;

"(4) the State has agreed to make binding loan commitments in an amount equal to 100 per centum of the amount of the grant payments within one year of the receipt of the quarterly payment of such funds;

"(5) the State has made adequate assurances through submission of an intended use report under section 604(c) of this title that (A) all funds available in the Water Pollution Control Revolving Fund will be committed in an expeditious and timely manner, (B) treatment works projects that are constructed in whole or in part prior to fiscal year 1995 with funds directly made available by capitalization grants under this title or section 205(m) to the State Water Pollution Control Revolving Fund will meet the same requirements applicable to grant projects funded under title II, and (C) such funds will first be used to assure maintenance of progress in the completion of all projects needed to meet the enforceable deadlines, goals, and requirements of this Act;

"(6) in addition to meeting the requirements of this title, the State has made assurances that it will commit or expend the payments so received in accordance with laws and procedures applicable to the commitment or expenditure of revenue of the State;

"(7) in carrying out the requirements of section 604 of this title, the State will use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards;

"(8) the State will require as a condition of making a loan that recipients will maintain project accounts in accordance with generally accepted government accounting standards; and

"(9) the State will make annual reports to the Administrator on the actual use of funds in accordance with section 604(d) of this title.

"STATE WATER POLLUTION CONTROL REVOLVING FUNDS

"Sec. 603. (a) To be eligible for an award of a grant under section 601 of this title, each State shall establish a Water Pollution Control Revolving Fund, administered by an instrumentality of the State with powers and limitations including those specified in subsections (b), (c), and (d) of this section.

"(b) The amounts of funds available to the Water Pollution Control Revolving Fund shall be dedicated solely to providing financial assistance (1) to any municipality, intermunicipal, interstate, or State agency for construction of publicly owned treatment works (as defined in section 212(2) of title II of this Act) and (2) for the implementation of management programs established under sections 319 and 320. The fund shall be established, maintained, and credited with repayments, and the fund balance shall be available in perpetuity for this purpose.

"(c) The instrumentality of the State administering the Water Pollution Control Revolving Fund shall be authorized to use the fund to make loans, on the condition that—

"(1) such loans are made at or below market interest rates, including interest free loans, at terms not to exceed twenty years;

"(2) annual principal payments shall commence not later than one year after completion of any project and all loans shall be fully amortized not later than twenty years after project completion;

"(3) the recipient of a loan shall establish a dedicated source of revenue for repayment of loans; and

"(4) the fund shall be credited with all repayment of principal and interest on all loans.

"(d) Except as otherwise limited by State law, a Water Pollution Control Revolving Fund may be used—

"(1) to buy or refinance the debt obligation of municipalities and intermunicipal and interstate agencies within the State at or below market rates, where such debt obligations were incurred after March 7, 1985;

"(2) to guarantee, or purchase insurance for, local obligations where such action would improve credit market access or reduce interest rates;

"(3) as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State if the proceeds of the sale of such bonds are deposited in the Water Pollution Control Revolving Fund;

"(4) to provide loan guarantees for similar revolving funds established by municipalities or intermunicipal agencies;

"(5) to earn interest on fund accounts; and

"(6) for the reasonable costs of administering the fund and conducting activities under this title provided that such amounts shall not exceed 4 per centum of all grant awards to such fund under section 601(d).

"AUDITS, REPORTS, AND FISCAL CONTROLS

"Sec. 604. (a) Each State electing to establish a Water Pollution Control Revolving Fund under this title shall establish fiscal controls and accounting procedures sufficient to assure proper accounting during appropriate accounting periods for—

"(1) payments received by the fund;

"(2) disbursements made by the fund; and

"(3) fund balances at the beginning and end of the accounting period.

"(b) The Administrator shall conduct, or require each State to have conducted, not less than annually, an independent audit to review the operations of each Water Pollution Control Revolving Fund. Such audits shall be conducted by an entity independent of the State, and in accordance with the Comptroller General's standards for auditing government organizations, programs, activities, and functions. An audit under this subsection shall be completed in such time and manner as deemed necessary or appropriate by the Administrator to carry out the purposes of this title.

"(c)(1) Each State shall, on an annual basis, prepare a plan on the intended uses of the amounts available to the fund. The plan shall include—

"(A) a description of the short and long term goals and objectives of the State's Water Pollution Control Revolving Fund;

"(B) information on the activities to be supported, including a description of project categories, discharge requirements under titles III and IV, terms of financial assistance, and communities served;

"(C) assurances and specific proposals for meeting the requirements of section 602(b)(4) and (5) of this title; and

"(D) the criteria and method established for the distribution of funds.

"(2) To meet the requirements of this subsection and to facilitate comments from interested local governments and persons on the use of funds, a State may adapt or use priority systems and lists developed under section 216 of this Act.

"(d) Beginning the first fiscal year after the receipt of payments under section 601(e) of this title, the State shall provide an annual report to the Administrator describing how the State has met the goals and objectives for the previous fiscal year as identified in the plan prepared for the previous fiscal year pursuant to subsection (c) of this section, including identification of loan recipients, loan amounts, and loan terms.

"(e) The Administrator shall conduct an annual review of each State plan and report prepared under subsections (c) and (d) of this section, and other such materials as are considered necessary and appropriate in carrying out the purposes of this title. After reasonable notice by the Administrator to the State or the recipient of a loan from a Water Pollution Control Revolving Fund, the State or loan recipient shall make available to the Administrator records the Administrator reasonably requires to review and determine compliance with this title.".

STATE-OPTION TO USE TITLE II FUNDS

SEC. 210. Section 205 is amended by adding a new subsection as follows:

"(m)(1) The Administrator is authorized to award from funds available for obligation during each fiscal year ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, September 30, 1990, September 30, 1991, September 30, 1992, September 30, 1993, and September 30, 1994, a capitalization grant to a State for the purpose of capitalizing a Water Pollution Control Revolving Fund established in compliance with title VI of this Act, where the Governor requests such action in accordance with paragraph (2) of this section.

"(2) No later than thirty days a[illegible] date of enactment of this Act with respect to funds available for obligation in the fiscal year beginning October 1, 1985, and not less than ninety days prior to the start of each of the fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994, a State shall provide notice of its intent to use all or a portion of the funds available for obligation in that fiscal year as a capitalization grant for a Water Pollution Control Revolving Fund under title VI of this Act.

"(3) Any sum made available to a State's Water Pollution Control Revolving Fund under this subsection shall be in addition to any funds otherwise allotted to that State under section 601(b) during any fiscal year.".

REPORT TO CONGRESS

SEC. 211. Section 516 of the Clean Water Act is amended by adding at the end thereof the following new subsection:

"(f) The Administrator shall submit to the Congress by February 10, 1990, a report on the financial status and operations of Water Pollution Control Revolving Funds established by the States in accordance with title VI of this Act. The Administrator, in cooperation with the States, including water pollution control agencies and other water pollution control planning and financing agencies, shall include in such report the following:

"(1) an inventory of the facilities that are in significant noncompliance with the enforceable requirements of this Act;

"(2) an estimate of the cost of construction for such facilities that require construction to meet such requirements;

"(3) an assessment of the availability of sources of funds for financing such needed construction, including an estimate of the amount of funds available for loans through September 30, 1999, from the Water Pollution Control Revolving Funds established by the States under title VI of this Act;

"(4) an assessment of the operations, loan portfolio and loan conditions of Water Pollution Control Revolving Funds established by the States under title VI of this Act;

"(5) an assessment of the effect on user charges of the assistance provided by Water Pollution Control Revolving Funds established by the States under title VI, compared to assistance under title II of this Act; and

"(6) an assessment of the efficiency of the operation and maintenance of treatment works constructed with financial assistance under titles II and VI of this Act.".

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. CHAFEE. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I do commend, Mr. President, the distinguished Senator from Rhode Island [Mr. CHAFEE] and the distinguished Senator from Maine [Mr. MITCHELL] for their very professional handling of the clean water bill. They managed the bill with skill. They demonstrated a clear understanding with respect to the contents of the bill. They were patient and cooperative with other Members who had amendments.

They brought to fruition the enactment of a good piece of legislation. Others of us whould hope to emulate the demonstrated prowess of these two fine Senators as we observed them in the managership of this important legislation.

Mr. SIMPSON. Mr. President, I certainly concur in those remarks. They are well-deserved and well-served. They are appreciated by the assistant majority leader.

Calendar No. 125

99TH CONGRESS
1st Session

SENATE

REPORT
99-50

CLEAN WATER ACT AMENDMENTS OF 1985

REPORT

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

TO ACCOMPANY

S. 1128

together with

ADDITIONAL VIEWS

MAY 14 (legislative day, APRIL 15), 1985.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
47-127 O
WASHINGTON : 1985

CONTENTS

Page

General statement 1

Section-by-section analysis:

  Title I:

    Authorizations 10
    Small flows clearinghouse 11
    Compliance dates 12
    Ocean waiver 13
    Modification for nonconventional pollutants 16
    Fundamentally different factors 18
    Water quality-based effluent limitations after BAT 22
    Indirect discharge of conventional pollutants 25
    Civil and criminal penalties 25
    Partial NPDES program approval 30
    Judicial review and award of fees 31
    Nonpoint source pollution 33
    National estuary program 43
    Stormwater runoff from oil and gas operations 44
    Anti-backsliding 45
    Sewage sludge 46
    Interstate dispute resolution 48
    Preservation of other rights 50
    Hampton, N.H. ad valorem tax amendment 50
    Limitation on discharge of raw sewage by New York City 50
    Chesapeake Bay 52
    Great Lakes 53
    Clean lakes 54
    Lake Pend Oreille study 54

  Title II:

    Construction grant authorizations 55
    Allocation 55
    Eligibilities after 1990 63
    Design-build project 63
    Innovative and alternative projects 64
    Marine CSO's and estuaries 64
    Indian tribes 64
    State water pollution control revoiving funds 68
    State option to use title II funds 70
    Report to Congress 71
Hearings 71
Rollcall votes 71
Evaluation of regulatory impact 71
Cost of legislation 72
Additional views of Messrs. Durenberger and Moynihan 74
Changes in existing law 76

Calendar No. 125

99th Congress
1st Session

SENATE

Report
99-50

CLEAN WATER ACT AMENDMENTS OF 1985

May 14 (legislative day, April 15), 1985.—Ordered to be printed

Mr. Dole (for Mr. Chafee), from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 1128]

together with

ADDITIONAL VIEWS

The Committee on Environment and Public Works reports an original bill (S. 1128), to amend the Clean Water Act, and for other purposes and recommends that the bill do pass.

General Statement

The last major changes to the Clean Water Act occurred in December of 1981 with the enactment of the Municipal Wastewater Treatment Construction Grant Amendments. Since then Congress has grappled with reauthorizing the non-title II portions of the Act but has been unable to pass legislation. In the 97th Congress and again in the 98th Congress the Subcommittee on Environmental Pollution held numerous hearings on the regulator portions of the law. Although a bill was reported from the Committee on Environment and Public Works in the 98th Congress it was not considered by the Senate.

With the expiration of the title II construction grants program at the end of fiscal year 1985, the Subcommittee on Environmental

Pollution again set out to develop legislation—this time to reauthorize both the regulatory and grants provisions of the Act.

S. 53, a bill almost identical to one reported by the Committee last year, and S. 652, which dealt primary with the construction grants proram, provided the basis for the Subcommittee's hearings. Three days of hearings were held on the two bills. Witnesses included representatives from the Administration, environmental and industry organizations, State and local governments, financial experts, and other interested persons.

Several major themes evolved during the hearings. First, the Clean Water Act is sound and significant progress is being made by industries and municipalities in removing pollutants from their discharges. Second, several provisions of the law must be tightened to assure compliance with water quality standards and provide for greater control of toxic, conventional, and nonconventional pollutants. Third, programs to control pollution from nonpoint sources are necessary if the goals and objectives of the Clean Water Act are to be achieved. Finally, the current construction grants program must be continued at its present level of funding through 1991 while providing for a gradual transition that assures State and local sufficiency adequate to meet treatment needs.

THE CLEAN WATER ACT

The Clean Water Act provides a comprehensive approach to cleaning up the Nation's waters. It established a regulatory framework for the phased implementation of control technologies for industrial and municipal discharges of toxic, conventional, and nonconventional pollutants. The Act provides for administrative, standard setting, enforcement, and funding mechanisms to achieve the goals of the Act.

The interim goal of achieving a level of water quality that protects a balanced population of both shellfish and wildlife and allows recreation in and on the water by July 1, 1983, was established when the law was enacted in 1972. Although attainment of that goal has not been achieved on a nationwide basis, considerable progress has been made.

According to the Environmental Protection Agency (EPA) substantial reductions have occurred in the discharge of pollutants. Sewage treatment plants are removing about 13,600 tons per day of the two principal conventional pollutants—suspended solids and biochemical oxygen demand (BOD)—an increase of 65 percent over 1973 levels. In July of 1977, 37 percent of the secondary plants required by the Clean Water Act had been completed and by June of 1983 that number had risen to 69 percent.

According to EPA, six key industrial pollutants including phosphate, heavy metals, and dissolved solids were reduced by more than half since 1973.

The EPA has reported that a majority of the Nation's waters, last assessed in 1982, meet the interim Clean Water Act goal of fishable, swimmable waters. Thirty six States have reported specific improvements resulting from the construction of municipal wastewater treatment facilities and 20 States reported improved water quality due at least in part to pollutant controls implemented by industry.

These trends are encouraging and demonstrate that the basic structure of the Clean Water Act is sound. Some of our more obvious and major pollutant problems created by sewage treatment plants and unregulated discharges by industry are being solved. But new, more subtle, problems must now be addressed. These are problems of devasting toxic substances and pollution from nonpoint sources, such as runoff from farmlands and urban areas.

Fish and shellfish communities are being reestablished in areas where they have been absent for decades because of the reduction of conventional pollutant loadings. Nonetheless hundreds of tons of toxic substances are being discharged into the Nation's waters each year from direct and indirect dischargers. It is indeed ironic that we must now warn people against consuming fish caught in many areas cleansed of conventional pollutants but still contaminated by toxic pollutants.

Toxic pollutants in water, fish tissue, and bottom sediments can come from a variety of sources including industrial and municipal point sources and nonpoint sources. According to the EPA, in 1982, 32 States cited water quality standards violations or use impairments due to toxic pollutants.

In the 1972 amendments to the Clean Water Act, Congress recognized the pervasiveness of toxics when it set as national policy that toxic discharges in toxic amounts be prohibited. The legislation reported by the Committee brings us closer to that goal by reaffirming among other things, the commitment to uniform installation of the best available technology economically achievable (BAT) by all dischargers; a uniform national pretreatment program; a national nonpoint pollution control program; and, the establishment of a "beyond-BAT" program which will require direct dischargers to install more stringent cleanup technology if the best available technology requirements set by EPA are not sufficient to meet State water quality standards because of toxic pollutants.

Although the EPA continues to move forward with developing guidelines for the installation of cleanup technology for both direct and indirect dischargers, the slow pace in which these regulations are promulgated continues to be frustrating. Of the 29 industrial categories established in 1977 for which guidelines were required to be promulgated 5 still remain to be completed. The pretreatment program—requirements controlling discharges into publicly owned treatment systems—is also languishing. Over half of the municipalities required to develop general pretreatment programs are not in compliance and the EPA still has to promulgate regulations for 8 of the 23 industrial pretreatment categories.

The technology-based approach to water pollution control was adopted in 1972 because of the historical ineffectiveness of the previous water-quality-based approach. This approach failed because of uncertainities about the relationship between pollutant loadings and water quality and the association between water quality and health and environmental effects. There are still significant gaps in knowledge of these relationships. Consequently the reported bill reaffirms the technologically based approach established in 1972 as an immediate and effective method of achieving the goals of the Act.

Congress has had to adjust compliance deadlines in the past in order to give the EPA the opportunity to develop complicated industrial cleanup standards. The current compliance deadline is July 1, 1984, a date which the EPA and many industries have failed to meet because so many of these cleanup standards have not been promulgated in a timely manner. Although the legislation grants an extension of the compliance date, it is limited to assure that these guidelines and standards will be promptly developed and implemented.

WATER QUALITY

Although technology-based BAT controls are the primary driving force behind the Act's cleanup requirements, water quality standards are expected to play a key supplementary role in assuring clean water and, where necessary, in developing aditional control requirements. When the Committee was considering the reauthorization of the Clean Water Act in the 98th Congress, it became deeply concerned over an effort by the EPA to significantly weaken water quality standards regulations. Among other things, the Agency's proposal would have biased the program toward less protective use designations, would have undone the Act's anti-degradtion policy, and would have failed to assure that toxic pollutants are addressed adequately in the water quality standards set by the States.

The Agency, in an agreement with the Committee and under the leadership of Administrator Ruckelshaus, withdrew these proposed changes and promulgated tough new water quality standards regulations.

Several provisions in the reported bill are designed around these regulations to assure they are implemented and enforced properly by the States and EPA. These provisions, which will be discussed further in the report, include new "beyond-BAT" control requirements which are developed, in part, through the water-quality standards setting process, and the anti-backsliding provision which prohibits discharges from backsliding to weaker controls on the basis of water quality-based waste allocation formulas or less stringent standards promulgated by the Agency.

The water quality standards regulations currently in effect are strongly supported by the Committee. During the hearings, the Administration reaffirmed its commitment to implementing and enforcing these regulations through the Act's longstanding anti-degradation policy and other water quality policies.

The principal objective of the Act is the restoration and maintenance of the integrity of our Nation's waters. Every requirement of the statute looks toward cleaner water—never backward toward relinguishing pollution control gains that contribute to meeting that objective. Attainment and maintenance of clean water will not be achieved if it is permitted to be degraded without compelling and overriding reasons. Moreover, if the Act is to accomplish its objectives, the high quality of waters considered to be outstanding national resources must be preserved. Although requirements for designation of these waters have never been used, the water quality standards regulations should enhance the likelihood that they will in the future.

It is particularly important within the context of water quality standards that regulations be as comprehensive as possible in protecting high quality waters. In order to implement the Act's objective, section 303(c) requires that water quality standards must "enhance the quality of water and serve the purpose of this Act."

Anti-degradation has been a part of the water quality standards scheme for at least 15 years. In 1968, Secretary of the Interior Udall announced a national policy, pursuant to the Water Quality Act of 1965, requiring the States to adopt an anti-degradation provision providing that:

> Waters whose existing quality is better than the established standards . . . will be maintained at their existing high quality. These and other waters of the State will not be lowered in quality, unless and until, it has been affirmatively demonstrated . . . that such change is justifiable as a result of necessary economic and social development and will not interfere with or become injurious to any assigned uses made of, or presently possible in, such waters.

This provision was adopted by States and then carried over into the 1972 Act under section 303(a). EPA's current regulation is consistent with this long-standing policy to the extent it preserves high quality waters, maintains existing uses, and protects national resource waters. In many respects it remains the cornerstone of the entire Clean Water Act.

In part, this is because the States play such a major role. Under sections 301 and 303, the States have primary responsibility to establish the designated uses of their water bodies and the duty to implement standards that protect those uses. These responsibilities and duties must be exercised so as to serve the Act's purposes, and EPA has been assigned the obligation of assuring consistency of State standards with the policies of the Act. Nowhere is that function more important than in reviewing the State's designation of uses under section 303.

Section 303(c)(2) provides that state standards must "protect the public health or welfare, enhance the quality of water and serve the purposes of this Act." The upgrading requirement of EPA's regulation is the principal means by which to assure that standards must enhance water quality and serve the purpose of section 101(a)(2)—to achieve fishable-swimmable water quality. This provision is consistent with the anti-degradation policy, which requires maintenance of high quality water and with the overall purpose of the Act—to restore and maintain the integrity of our waters.

Restrictions on downgrading follow from the goal of section 101(a)(2)—to achieve fishable-swimmable water quality "wherever attainable"—and from the requirement of section 303(c)(2) that State standards serve the purposes of the Act. The concept of "attainability" therefore is central to determining which of the various uses, or combinations of uses, listed under section 303(c)(2) shall be designed and protected.

Attainability means feasibility, not desirability or local preference. It is not a question of whether the Nation wants clean water, but of whether it is possible to achieve clean water without economic or social hardship. EPA should disapprove downgrading of State standards unless it is clearly demonstrated that a use cannot be achieved, or would cause widespread social or economic impacts to do so. Actual, existing uses of waterways must, of course, be protected.

The water quality standards regulation permits downgrading of "aquatic life protection uses" where "natural features of the water body" preclude attainment, or where low-flow conditions prevent use attainment. This change simply means that downgrading may not occur based on physical conditions such as unattractive surroundings, water velocity, difficulty of access, boat traffic or other impediments affecting the ability of people to use a water body. In other words, the regulation requires that uses be maintained to allow water recreation, even though it might be deemed unlikely that substantial numbers of people actually would make such uses of a particular water body.

In those rare instances where degradation of high quality waters is permitted in order to accommodate essential economic or social development, the States must assure water quality adequate to protect existing uses fully by providing for an adequate margin of safety in defining water quality critiera.

Water quality standards are the principal mechanism in the Act for determining how clean—how safe from damage to human health and aquatic life—a stream or lake can be. Since standards assure continued progress toward the Act's goal, it would make little sense to allow deviations, however limited or temporary, from these judgments concerning the health and welfare of people who enjoy and depend on our precious water resources. If economic effects truly are substantial and widespread, then a downgrading of standards may be justified. But this is a considered community wide decision to forego higher beneficial uses of a waterway, and must not be made in the narrow context of a source-specific variance.

In Colorado and some other States, high designated uses established through the water quality standards process have been set for some stream segments. A number of commenters have argued that the EPA water quality regulations restricting the modification of water quality goals make it unnecessarily difficult for States to respond in a reasonable fashion to changing circumstances and unforeseen difficulties.

Municipalities and industrial interests in Colorado have indicated this problem appears to be particularly acute where there are low or intermittent flows in receiving streams. This can be caused by natural variations or limitations in runoff, or by man-made diversions or impoundments authorized by State laws governing the allocation of water. The natrual presence in receiving waters of toxic metals can also pose problems for attaining designated uses. In addition, the reduced availability of Federal funding for advanced waste treatment could increase the economic difficulty faced by affected municipalities in attempting to attain water quality standards.

It has been suggested that States be given the authority to downgrade the designated uses of these stream segments through the NPDES permit issuance process. The Committee recognizes the existence of this problem, but it is not convinced that a statutory response is necessary. Instead, the Act and EPA regulations provide an appropriate mechanism for downgrading water quality standards where standards are unattainable.

For example, it has been suggested that some water quality standards in Colorado initially were established without regard to their attainability. If so, the State may review these uses and, if they are found to be unattainable, revised standards may be adopted.

EPA regulations set forth procedures for modifying inappropriate standards through an intergovernmental at review process which provides an opportunity for public comment. Thus, for example, standards can be downgraded due to low flow conditions, hydrologic modifications that prevent attainment of the use designated in the standard, natural physical conditions of the stream that preclude attainment of the aquatic life protection use, or if controls needed to meet the standard would result in substantial or widespread economic impact.

None of these criteria lend themselves to a precise, uniform national definition. In reviewing State proposals to downgrade water quality standards pursuant to these criteria, EPA policy should be flexible enough to accommodate regional variations. For example, in States such as Colorado that are rich in mineral resources, some streams may exhibit natural background concentrations of toxic metals that preclude attainment of a sensitive cold water fishery though other environmental parameters, such as temperature and dissolved oxygen, would sustain such a fishery. In such cases, EPA should recognize the unique hydrogeologic character of such streams and allow the State appropriate flexibility in defining the nature of the aquatic life protection use.

Water quality-standards, effluent guidelines and limitations are translated into National Pollution Discharge Elimination System Permits (NPDES) to assure compliance with control requirements. The Committee reconsidered a provision it approved in the 98th Congress to extend the maximum term of NPDES permits to ten years and to require that permits be reopened and revised under certain conditions. This bill does not contain such a provision. The reported bill therefore reaffirms present law regarding permit terms as the most effective way to assure that discharges of toxic and other pollutants are brought under control in the most timely fashion.

NONPOINT SOURCE POLLUTION

During the course of the Clean Water Act reauthorization process during the 98th Congress, it became clear that nonpoint source pollution could no longer be ignored. This form of water pollution includes runoff from agricultural and mining areas, and construction sites. It includes sediments, pesticides, fertilizers, bacteria, toxic metals and other serious pollutants. As point sources are brought under control, nonpoint source pollution looms as a larger and larger problem. The evidence of nonpoint pollution continues to grow. It has been estimated that 50 percent of all water pollution comes from nonpoint sources.

The legislation takes an important first step in establishing a national nonpoint source program. States are encouraged to implement management programs that will target critical areas, identify the sources of nonpint pollution, identify best management practices, and set timetables for program implementation. Funds would be allotted to States to support their implementation of these programs.

The nonpoint source pollution provisions are virtually identical to those reported by the Committee in the last Congress. There are, however, several changes as a result of testimony presented in the Subcommittee's hearings. States may use up to 1 percent of their allotment funds from the construction grants program to supplement funding authorized under the nonpoint program, and nonpoint source programs shall include an assessment of the relationship between nonpoint pollution and groundwater. These provisions are discussed further in the report.

CONSTRUCTION GRANTS

Since enactment of the Clean Water Act in 1972, over $56 billion has been spent on constructing publicly owned treatment works (POTWs). The Federal Government has contributed over $40 billion with State and local governments contributing the remainder. These large expenditures have produced significant water benefits across the Nation. By 1982 there were over 15,000 waste treatment plants in operation and the number of persons receiving secondary or greater treatment increased by 67 percent (from 1972) while population increased only 11 percent.

These benefits were, in part, achieved through a strong Federal role provided in the 1972 amendments. However, while increasing Federal aid ($18 billion in contract authority) and expanding the Federal grant share (75 percent of eligible project costs), Congress also recognized that this initial level of Federal financial assistance was temporary and expected States and municipalities to eventually assume full responsibility for the operation, maintenance and replacement of constructed facilities.

The shift to ultimate State and local responsibility was started in 1977 with amendments that increased the State role in managing the program. The 1981 amendments to the construction grants program brought about major reforms in the program and signaled a gradual transition from a high level of Federal financial involvement to greater State and local responsibility. Changes were made to refocus the program on water quality goals. Funding for combined sewer overflows and "growth" related categories such as collector sewers and future population were eliminated. These Federal share was reduced from 75 percent to 55 percent and the program's authorization level was reduced from $5 billion to $2.4 billion per year. The reform assured that funds would be appropriated to the full authorized level.

The major issue facing the municipal pollution control program today is how to manage a continued transition to State and local responsibility and self-sufficiency, while asssuring timely completion and continued compliance of all municipal facilities. The $40 billion investment made by the construction grants program since 1972 should be protected by leaving in place adequate institutional and financial mechanisms at the State and local level. Only through a sound financial mechanism will the needed capital improvements for municipal wastewater treatment be financed and progress in water quality improvements be maintained.

Title II of the reported bill calls for the creation of State Water Pollution Control Revolving Funds which continue the transition started with the 1981 amendments while assuring that construction of necessary facilities continues to move forward. Under this program, the Federal Government will gradually reduce straight categorical grants for POTWs and, in their place, provide money for States to establish loan funds. Using Federal money for loans, States can make low interest loans available to their communities for construction of treatment facilities.

A successful transition will require a more extended period of time and a shift in the type of Federal assistance provided. To provide for the transition, the reported bill establishes a State Water Pollution Revolving Loan Fund (SRF) under a new title VI of the Act. These SRF's if properly managed, will provide a capital base for financing municipal wastewater treatment facilities far into the future. Once established and credited with repayments from the initial loans made with the Federal capitalization grant funds, the SRF's will generate a stream of revenues that will enable a State to leverage the initial funds many times over.

The reported bill would provide for a phase-out of the title II construction grants program over a five-year period, while the new title VI that would authorize assistance for States through the establishment of State-administered revolving loan programs. Taken together, the authorizations for titles II and VI would continue Federal assistance for municipal wastewater treatment over a nine-year period (1986–1994). Although this authorization period is beyond those typically included in previous amendments to the Act, it is needed for States and municipalities to plan effectively for assumption of increased funding responsibilities.

The reported bill extends the current $2.4 billion annual authorization for title II construction grants for three years. In fiscal years 1989 and 1990, the annual authorization for title II would be reduced to $1.2 billion. No further authorizations would be made for title II after fiscal year 1990.

During this five-year period, States would be provided with sufficient lead time to begin setting up State revolving loan programs. The bill encourages the creation of these self-sustaining financing entities at the earliest opportunity by providing each State with an option of converting title II construction grants funds into capitalization grants for SRF's.

Beginning in fiscal year 1989 and continuing in fiscal year 1990, $1.2 billion a year would be authorized specifically for capitalizing SRF's under the new title VI. In fiscal year 1991, the amount would be increased to $2.4 billion. Thereafter, the SRF authorization would gradually be reduced by providing $1.8 billion in fiscal year 1992, $1.2 billion in fiscal year 1993, and $600 million in fiscal year 1994. After fiscal year 1994 all authorizations for direct Federal contributions to municipal wastewater treatment of SRF's would be ended. (See chart below:)

[In billions of dollars]

Fiscal year	Construction grants (title II)	Revolving loan fund (title VI)
1986	2.4	
1987	2.4	
1988	2.4	
1989	1.2	1.2
1990	1.2	1.2
1991		2.4
1992		1.8
1993		1.2
1994		.6

The total authorizations for title II and VI amount to $18 billion and will assure that the core treatment-related needs identified in the 1981 amendments will be met.

SECTION-BY-SECTION ANALYSIS

TITLE I

AUTHORIZATIONS

The reported bill continues authorizations for a number of programs, most of which have existed since the Federal Water Pollution Control Act (now referred to as the Clean Water Act) was enacted in 1972. These include research, manpower training, forecasting, grants to State and interstate water pollution control agencies, training grants and scholarships to institutions of higher education, grants for the Clean Lakes program, and authorizations for all other sections of the Act for which funds are not specifically authorized elsewhere. Authorizations contained in this section continue these programs at fiscal year 1982 levels for fiscal years 1984 through 1987.

Section 104(u)(1) is amended to authorize $22,770,000 annually for such activities as research technical services, investigations, monitoring and coordination.

Section 104(u) is amended to provide $3 million annually for the manpower development training program provided for by section 104(g)(1). This program provides assistance to States and other entities to develop trained personnel to operate and maintain sewage treatment works. $1.5 million is authorized annually for the employment needs and forecasting program provided for by section 104(g)(2).

Section 106(a)(2) is amended to provide $75 million annually for grants to States and interstate agencies to assist them in administering programs for the prevention, reduction, and elimination of pollution, including enforcement directly through appropriate State enforcement officers or agencies

Section 112(c) authorizes $7 million per year for the program of training grants and scholarships to institutions of higher education to assist them in carrying out programs for the preparation of undergraduate students to enter water quality control-related occupations. This program is provided for by sections 109, 110, 111, and 112 of the Clean Water Act.

Section 314(c)(2) is amended to authorize $30 million annually for grants to States for assistance in determining the eutrophic conditions of publicly-owned freshwater lakes, ways of controlling pollution in those lakes, and methods of working with Federal agencies to restore lake water quality.

Finally, $160 million per year is authorized for section 517 for carrying out provisions of the Clean Water Act for which funds have not otherwise been authorized.

SMALL FLOWS CLEARINGHOUSE

This section amends section 104(q) of the Act to use a portion of the funds set aside for innovative and alternative (I&A) technologies, but not obligated within the 2 year deadline, to fund the Small Flows Clearinghouse. This Clearinghouse was established under the 1977 amendments to collect and disseminate information on alternatives to traditional expensive community-wide sewage treatment systems, suitable for rural settings and individual or cluster application. The purpose of the Clearinghouse is to assure the better utilization of the I&A set-aside money.

At the end of the last two obligation periods, several million dollars remained unobligated and had to be reallotted. The amendment dedicates $1 million of that to funding the Clearinghouse. Previously, the Clearinghouse has received funds through the Agency's research budget, which has provided too little funding to carry out assigned tasks. The arrangement has been unsatisfactory to the Office of Research and Development and the Office of Water.

Recently the Clearinghouse, currently operated under contract with West Virginia University, was consolidated with another data base owned by the Agency at Research Triangle Park. This has put an additional strain on the Clearinghouse's resources. The amendment will help the Clearinghouse provide an accelerated program of information dissemination and technology transfer, so that small communities can meet the Act's requirements at affordable costs by using alternative technologies and alternative financing and managing arrangements. Funds available under this amendment will also assist State and local authorities who are responsible for small communities in developing programs that assure implementation of the most affordable possibilities. The National Clearinghouse will accomplish this through increased access to existing databases, the preparation of new training materials for both technological and administrative alternatives, and delivery of training programs tailored to the needs of individual States. Cooperation of appropriate State agencies in addressing their unique needs at the State and local level should be sought. For example, the State of Alabama has indicated a desire to cooperate with the National

Clearinghouse to develop and deliver a Statewide program for small communities.

COMPLIANCE DATES

The reported bill extends deadlines for compliance with several technology-based requirements of existing law. Section 301(b)(2)(C) is amended to require compliance with best available technology (BAT) effluent limitations for toxic pollutants as expeditiously as practicable but not later than three years after promulgation of the effluent limitations, but in no case later than July 1, 1988.

Under section 301(b)(2)(E) as amended, best conventional pollutant control technology (BCT) effluent limitations for conventional pollutants must also be complied with by those deadlines. Compliance with BAT effluent limitations for nonconventional, nontoxic pollutants under section 301(b)(2)(F) as amended is required not later than three years after such limitations are promulgated but in no case later than July 1, 1988.

A new paragraph (3) is added to section 301(b), providing that best practicable control technology (BPT) effluent limitations promulgated after January 1, 1982, which require a level of control substantially greater or based on fundamentally different control technology than limitations in the permits for such industrial category issued before that date, shall be complied with as expeditiously as practicable but not later than three years after promulgation of the effluent limitations but in no case later than July 1, 1988.

New section 302(b)(3)(B) provides that effluent limitations established in permits issued after enactment of these amendments on the basis of best engineering judgment or best professional judgment, in lieu of effluent guidelines for BPT, BAT, or BCT for toxic conventional or nonconventional pollutants, shall be complied with as expeditiously as practicable but no later than three years after such limitations are established in the permit (and in no case later than July 1, 1988). These extensions only affect deadlines for technology-based effluent limitations for direct dischargers. They do not affect pretreatment compliance dates.

The Clean Water Act currently mandates that industry achieve effluent limitations based on BAT for all toxic pollutants, and BCT for conventional pollutants, no later than July 1, 1984. BAT for nonconventional pollutants must be achieved by three years after promulgation but no later than July 1, 1987.

These target dates were enacted in the expectation that the Environmental Protection Agency would promulgate in a timely fashion for the 26 major industrial categories to be regulated. The Agency has not met this expectation. Under court order, the Agency is now required to promulgate all remaining standards by March, 1986.

It was impossible for many of these 26 industries to meet the 1984 compliance deadline. As documented in hearings before the Subcommittee on Environmental Pollution, most industries require three years after promulgation of effluent limitation guidelines to design and construct necessary facilities. This section incorporates this three-year period into law.

In extending these compliance deadlines, the Committee emphasizes that dischargers are to comply with technology standards as expeditiously as practicable, regardless of the outside limits prescribed by this legislation.

Section 301(b)(3)(A) is intended to allow a discharger a reasonable amount of time to alter existing BPT treatment equipment or install new or additional treatment where necessary to meet more stringent BPT discharge requirements. Dischargers who had never previously received a permit would be required to meet the new BPT effluent limitations upon commencement of discharge. For previously permitted dischargers compliance should be required as soon as practicable. In some cases, where the treatment facilities in place are capable of meeting the new limitations, this may require immediate compliance. Additional time to meet new limitations should only be given where the level of control required by the new limitations is substantially greater than that required by the existing permit or where the new limitations are based on new or significantly different control technology.

New section 301(b)(3)(B) establishes compliance dates for effluent limitations based on the permit writer's best professional judgment under section 402(a)(1) of the Act. BPJ limitations may be imposed either where effluent limitations guidelines under section 304(b) have not been established or where limitations in addition to the guideline are necessary to control pollutants or wastestreams not addressed by the guideline regulation. This section would not alter the compliance dates established in section 301(b)(2) for permit effluent limitations based on an effluent limitation guideline. In cases where the permit incorporates limitations based on both an effluent limitation guideline and additional limitations under section 402(a)(1), the compliance dates established in section 301(b)(2) would govern the guideline-based limitations and the compliance dates established in this subsection would govern the section 402(a)(1) limitations. In addition, it is often the case that a wastestream controlled by an effluent limitations guideline is combined with a process wasterstream or a non-process wastestream, such as non-contact cooling water or sanitary wastes, controlled by BPJ limitations, prior to discharge. Where the discharged wastestream is controlled by a combination of both a guidelines based limitation and a BPJ limitation, the compliance dates established in section 301(b)(2) would govern.

OCEAN WAIVER

This section amends section 301(h) of the Act to restrict the availability of modifications of the uniform secondary treatment requirement for discharges to ocean waters. It is identical to the provision reported by the Committee in the 98th Congress.

When section 301(h) in 1977 was enacted, it was intended that only municipalities with primary treatment capability discharging into deep and unstressed waters be considered for these modifications. It was expected that a number of West Coast and very few East Coast communities could meet the conditions laid out in section 301(h) to obtain a modification. However, Court decisions have blurred the intent of Congress so that both East and West coast communities discharging sometimes untreated sewage effluent can expect to receive modifications. This should not be the case.

This section establishes restrictive conditions on the qualifications of applicants for a section 301(h) modification and the ocean waters into which they discharge. In order to apply for a section 301(h) ocean discharge modification, a municipal treatment facility must be in compliance with applicable pretreatment regulations. In the absence of Federal categorical pretreatment standards, treatment works serving a population of 5,000 or more persons must be enforcing a comparable pretreatment program to assure the control of toxic pollutants at the time of application.

Current regulations require communities to develop pretreatment programs. This amendment makes it clear that Congress intends that no final modification should be granted unless the applicant has satisfied this requirement. By the time of approval, the applicant must have an approved pretreatment program with which indirect discharges are in compliance. Failure to meet this requirement will result in denial of modification where non-compliance among indirect dischargers is widespread. However, it is not the intent that EPA deny modification to POTWs which are diligently implementing a pretreatment program merely because an insubstantial percentage of indirect dischargers with a trivial amount of flow are not in compliance with pretreatment requirements. The Administrator should exercise discretion in determining the significance of non-compliance and examine the measures the POTW is taking to assure compliance and implement an effective pretreatment program. Emphasis should be placed on overall compliance, as well as focusing on individual indirect dischargers which may not be in compliance.

The applicant must also be providing a minimum of primary treatment of their municipal effluent, including disinfection where appropriate, at the time the modification becomes effective. Section 301(h) was never intended to authorize the discharge of untreated sewage. This amendment makes clear that operating primary treatment is a minimum to qualify for a modification.

Flexibility is provided for the Agency to deal with unique problems in Alaskan Villages and the Trust Territories where screening and skimming of waste may consitute primary treatment and be sufficient, provided that all other section 301(h) criteria are otherwise satisfed.

Marine bays and estuaries represent some of our most productive biological areas and deserve to protected against degradation. Two amendments to section 301(h) have been made for that reason. The first amendment clarifies that marine waters receiving discharges must exhibit characteristics which assure that the diluting water does not contain significant amounts of effluents previously discharged from the POTW. While this amendment deals with "marine waters" it is expected that it will have its greatest impact on marine bays and estuaries. It is intended to be used as another test by the Agency in evaluating discharges into these waters to make certain that sufficient flushing exists so as not to allow entrapment of previously discharged waste. While this provision does not affect any tentative approvals granted to date, it is expected to give the Agency an important guideline for future review of applicants' discharges into marine waters.

The second amendment to section 301(h) deals with discharges into stressed waters. The amendment provides that a section 301(h) modification may not be issued for estuarine waters if, at the time of application, the waters do not support a balanced indigenous population or allow recreational activities, or exhibit water quality below the water quality standards adopted to protect public water supplies, wildlife, or recreational activities. The prohibition applies regardless of any causal relationship between such characteristics and the applicant's discharge. This provision is intended to disallow effluent discharges into estuarine waters which have been stressed by previous or existing pollution by other point and nonpoint discharges.

For the purpose of section 301(h)(8)(B) the term "balanced indigenous population" is defined as the community that can reasonably be expected to occur in a given area absent pollution. Its existence is generally determined by comparing the ecological community in question to that of nearby healthy communities existing under comparable but unpolluted physical and environmental conditions.

Again, attention is given to saline estuaries receiving discharges which are not achieving the interim water quality goal of the Act. It is intended that applicable water quality standards refers to standards for BOD, SS, DO, and toxic pollutants. The phrase "such other standards" necessary to assure support and protection of such uses refers to marine water quality criteria necessary to support these uses.

Waivers from secondary treatment for discharges into marine estuaries should be given special reviews from the Agency, when the estuaries are stressed from a combination of sources. Partial treatment of sewage into already polluted estuaries should not be allowed. Previously EPA looked at only the source seeking the modification in making its determination. Under this amendment the Agency cannot grant a modification for a discharge into an estuary whether or not the responsibility for the failure to meet the interim goal of the Act lies with the discharger. Waiving treatment requirements for a point source discharging into an unhealthy body will not result in reasonable further progress toward achieving the goals of the Act.

Conditions are placed on the characteristics of the offshore waters into which the applicant plans to discharge. Marine waters must exhibit physical and tidal characteristics which would assure sufficient flushing action to eliminate significant concentrations of municipal effluent discharged. The level of effluent concentration should not result at any time in a deleterious effect on the chemical or biological quality of marine waters or their uses.

Section 310(j) is amended to allow a period of thirty days after enactment for a publicly owned treatment works with an existing contract to discharge its sewage into another treatment works which has applied for a section 301(h) modification, in which to apply for such a modification in its own right. This is intended to accomplish a narrow, specific purpose: to provide an opportunity for the Irvine Ranch Water District, a California public agency (or its successor agency, District 14), to apply for a modification under section 301(h). This district, which currently has a contract to discharge through the Orange County Sanitation District outfall, had been operating on the assumption that its discharge was accommodated in the application for modification by the Orange County Sanitation District and thus the district did not apply during the period allowed by the 1981 amendments.

The Irvine Ranch Water District has made a legitimate case for special consideration, but the amendment is intended to exclude any other opportunities for application for modification under this provision. The only special consideration provided to the District is the opportunity to apply for the modification. Prior to its discharge into the ocean, either through its own outfall or through Orange County Sanitation District's outfall, the District must comply with the provisions of section 301(h). The amendment limits the opportunity for application to 30 days after enactment. The Environmental Protection Agency, however, should provide the District with the time necessary to demonstrate compliance with the requirements of section 301(h) so long as the application is promptly submitted within the time required and the District demonstrates due diligence in meeting the requirements for a modification. The discharge to which the modification would apply could be direct to the ocean through an IRWD/District 14 ocean outfall or through the ocean outfall of the party with which that contractual arrangement exists.

MODIFICATION FOR NONCONVENTIONAL POLLUTANTS

The bill amends section 301(g) of the Act to restrict the circumstances under which a modification from best available technology standards (BAT) can be granted for nonconventional pollutants. Nonconventional pollutants are defined as pollutants other than conventional pollutants identified pursuant to section 304(a)(4) of the Act, toxic pollutants subject to section 307(a) of the Act, or the thermal component of discharges.

Current law allows modifications to BAT standards for nonconventional pollutants if, upon a showing by the discharger, such modification will result, at a minimum, in compliance with best practical treatment; will not result in additional requirements on point and nonpoint sources; and will not result in unacceptable risks to human health or the environment or interfere with the attainment of maintenance of water quality standards.

According to the EPA, scientific data on a great number of nonconventional pollutants are non-existent or very limited. There are very few data on toxicity, and testing methods are often inadequate to determine effects on human health and the environment for a number of these pollutants. Some 55,000 identified compounds could technically qualify for modification of best available technology requirements. The Agency's resources to make decisions on modification applications are inadequate. EPA has estimated that it takes between one-half and two years; between .75 and 3.5 full time employees; and between $20,000 and $50,000 to process a modification.

In the past, proposals for water quality-based waivers for toxic and conventional pollutants have been rejected by the Congress.

During the hearings the Subcommittee learned that, in many cases where information exists, nonconventional pollutants can be highly toxic to humans, fish and other aquatic organisms, and wildlife. What distinguishes many of these substances from the 307(a) toxics is simply that they are not yet on the toxics list. In fact, many nonconventional pollutants are greatly more toxic than toxic pollutants on the 307(a) list.

Nonconventional pollutants should be treated no differently from toxic or conventional pollutants, except in a very limited fashion. Thus, the amendment to section 301(g) allows modifications to BAT guidelines only for five well studied nonconventional pollutants—ammonia, chlorine, color, iron and total phenols (4AAP). EPA has developed adequate information on these pollutants as a result of currently pending applications for modifications from the iron and steel and steam electric industries.

The Administrator may evaluate additional nonconventional pollutants and recommend to Congress that they are eligible for inclusion under section 301(g), but any such recommendation must be enacted by Congress to become effective. The Administration, however, is expected to add any nonconventional pollutants to the section 307(a) toxic pollutant list, if such evaluations warrant.

The provision also limits to one year the time in which the Administrator can make a determination on a request for a modification under section 301(g)(4). The discharger must, in its application, make an affirmative showing that the discharge will meet the conditions in section 301(g)(A), (B) and (C). Simply asserting that there is no evidence that the substances harms human health or the environment is insufficient. For the purposes of this provision, final Agency action means the administrative decision document or final permit issued by EPA, following public notice and comment as appropriate.

Section 301(g)(5) clarifies that this amendment applied to all modification requests under this subsection which are pending upon the date of enactment of the Clean Water Act Amendments of 1985. Specifically, for such pending requests, this provision is intended to restrict EPA's consideration to requests for modification to only those five nonconventional pollutants listed in section 301(g)(1) as amended. Pending requests for modification for other nonconventional pollutants cannot be granted and therefore will not be acted upon. For completed applications pending at the time of enactment of the Clean Water Act Amendments of 1985, EPA must take final Agency action within one year of the date of submission of the completed application to EPA, or under section 301(g)(4) the application will be deemed to be denied. This restriction applies specifically to completed applications as defined in EPA's regulations. Applicants with pending initial applications filed in accordance with section 301(j) may file completed application within a reasonable time after enactment.

EPA has stated that applications for modification under section 301(g) have effectively stalled, or stayed, new permits from being issued to applicants. These situations prevent the installation of best available technology controls for all pollutants in the discharge, even those that are not subject to the modification request, until a decision on the modification is made by the Agency. As stated previously these decisions can take up to two years or more. As a result, toxic and conventional pollutants may continue to be discharged into receiving waters while the application is pending. To address this situation, the bill amends section 301(j) of the Act to forbid the stay of any requirements or limitations for any pollutant other than for the pollutants for which a section 301(g) modification may be sought. Thus, for example, if a discharger applies for a modification for chlorine, such application shall not, under any circumstances, stay the discharger's obligation to comply with the applicable effluent guideline which requires control of toxic, conventional or other nonconventional pollutants to meet the compliance deadline, nor may the Administrator or a State extend the compliance deadline for any applicant.

If a modification is granted under this subsection, the applicant is expected to make a new demonstration each time the applicable permit expires, for such modification to be granted in the future.

FUNDAMENTALLY DIFFERENT FACTORS

This section authorizes the Administrator to grant fundamentally different factors (FDF) modification and defines the conditions under which the Administrator may do so.

A FDF modification is an administrative mechanism to provide an opportunity for relief from the application of national effluent limitations guidelines and standards for categories of existing sources for toxic, conventional and nonconventional pollutants. EPA will write a separate effluent standard for an individual facility if the factors that govern standard setting are found to be fundamentally different at the individual facility from the factors considered in establishing the guideline or standards for the industrial category.

The Agency has, by regulation, created an opportunity for FDF modifications from national categorical effluent standards for direct discharges for best practicable control technology currently available (BPT) under section 301(b)(1)(A), best available technology economically achievable (BAT) for toxic and nonconventional pollutants under section 301(b)(2), and best conventional pollutant control technology (BCT) for conventional pollutants under section 301(b)(2). For indirect dischargers (those discharging to a publicly owned treatment work rather than directly to a surface waterway), FDF modifications are available for pretreatment standards for existing sources (PSES) under section 307(b).

EPA's authority to grant FDF modifications has been challenged in several different courts. Recently, the Supreme Court held that the Clean Water Act does not prohibit the granting of FDF variances from pretreatment standards for existing sources for toxic pollutants (*Chemical Manufacturers Assn.* v. *Natural Resources Defense Council, Inc.*, No. 83-1013—U.S. Feb. 27, 1985).

As a result of this decision, EPA is issuing FDF modification without explicit statutory authority and without statutory definition of the conditions under which such modification may be issued. Current law requires the Administrator to set national effluent limitations guidelines and categorical pretreatment standards for an entire industrial category or subcategory. The amendment imposes additional restrictions, beyond those in EPA's current rules, on the Administrator's ability to modify national standards for individual facilities seeking an FDF modification.

Relief, in the form of alternative effluent limitations or standards, may be granted only if the applicant makes satisfactory demonstrations to the Administrator under all provisions of this subsection. Relief may not be granted without the concurrence of the State.

The Administrator is expected to use this authority only rarely and only to create a separate standard for a facility so unique that it would have required a separate subcategory had EPA given it adequate attention in the national rulemaking. The Administrator should first rely on the national rulemaking process to address the concerns of those who may seek an FDF modification. It is the Committee's intent to carefully oversee and assess the Agency's use of the authority provided in this section. The amendment specifies four criteria that must be demonstrated by the applicant to the satisfaction of the Administrator, before alternative requirements can be established.

First, to be granted relief under section 301(n), a facility must be fundamentally different with respect to at least one factor, other than cost, specified in sections 304(b), 304(g), or 307(b) and considered by the Administrator in establishing the specific national effluent limitations guidelines and standards of concern to the facility. Cost may not be a factor upon which relief may be granted. Cost was excluded as a criterion because case-by-case analysis of the cost of achieving an effluent reduction is inappropriate in a BAT national effluent limitations or preteatment standard designed to bring all facilities up to the level of control of the best discharger in the category.

The second criteria requires that applications for an FDF modification must be based solely on information and supporting data which have been submitted to the Administrator during the rulemaking process and which specifically raise the factors that are fundamentally different for the facility. This information will assure that effluent limitations guidelines and categorical pretreatment standards are as comprehensive as possible, and thereby diminish the need for applications under this subsection. This requirement also will discourage withholding of information during the rulemaking proceeding for subsequent use in an administrative proceeding seeking variance from the categorical standard.

Where the record is already closed and an applicant has new information to present bearing on the categorical standard, the applicant continues to be able to petition the Administrator to reopen the rulemaking and record and consider the creation of a subcategory. The Administrator's disposition of such a petition is subject to judicial review.

Third, this provision does not authorize the Administrator to weaken the level of controls intended by Congress, especially for toxic pollutants. For this reason, the amendment specifies that the alternative requirement imposed on the applicant can be no less stringent than justified by the applicant's fundamental difference from the rest of the category or subcategory with respect to the statutory factors (other than cost) specified in section 304(b) or (g) of the Act.

Fourth, if relief is granted, any alternative requirement shall not result in any non-water quality environmental impact markedly more adverse than the impact considered by the Administrator in establishing the applicable national effluent limitations guidelines and standards.

The reported bill contains several additional restrictions on EPA's authority to grant modifications in order to avoid the delays in "fundamentally different factors" proceedings. An applicant for an alternative requirement must submit a complete application to the Administrator not later than 120 days after publication of the final effluent limitation guideline or categorical pretreatment standard in the Federal Register. The Administrator may not waive this deadline or extend it for submission of additional data.

If EPA amends a guideline or standard, an applicant may submit an FDF variance request within 120 days of publication of the final revision in the Federal Register. In such a case, the revision must specifically affect the discharge limitations or standards applicable to the facility and must be the limitations or standards from which the applicant is seeking relief under this subsection. Such revisions of such applicable guidelines and standards are expected to be rare so that most, if not all, applications will be submitted within 120 days after the publication of the original final guideline or standard.

Section 301(n)(2) requires the Administrator to deny any application that is not complete, without providing for an opportunity for reapplication. The applicant must submit a complete application within the 120 day period. A complete application must contain demonstrations, including all information and supporting data, satisfactory to the Administrator, regarding the applicable statutory provisions. A complete application should include, at a minimum, such items as a specific reference to the factors that are fundamentally different with supporting information; specific references to the administrative record for the rulemaking justifying the claims; a copy of or reference to the previous submission of the information and supporting data during the rulemaking and references to the administrative record for the rulemaking where these comments were considered and a discussion of why the facility is entitled to relief.

The burden for making the necessary showings is entirely upon the applicant, not EPA. However, EPA may request clarifications of the submitted information in order to allow the Administrator to make a decision on a request, but he may not extend the 120 day period. The Administrator is required to deny any application that is not complete.

This provision is included because many applicants for FDF modifications have submitted very incomplete applications and have requested a stay of all applicable effluent standards pending disposition of the application.

In the past, it has taken EPA a very long time and in some instances, years, to issue decisions on FDF modifications. According to EPA it takes an average of four to five years to issue an administrative decision on an FDF modification request. This does not include the prohibitive costs of reviewing the application or the time subsequently necessary for administrative appeals and finally, challenge in the Federal courts.

For these reasons, section 301(n)(2)(B) requires that final EPA action be taken within 240 days after submission of an application to a State or to EPA, or the application will be deemed to be denied. For the purposes of this provision, final Agency action means the administrative decision issued by EPA, following public notice and comment, as appropriate. Any administrative appeals that may ensue must be decided by the Agency within the minimum additional period necessary.

This timeframe is necessary to assure that a final decision on FDF application will not jeopardize the applicant's responsibilities to meet compliance deadlines for BAT, BCT, or categorical pretreatment standards, should the application be denied.

Pending applications on the date of enactment shall be deemed to have been submitted to the Administrator 30 days after enactment of this amendment. This provision sets in motion the Administrator's duty to act on the application within 240 days. Applications filed after enactment shall not be deemed complete unless accompanied by the required application fee.

Section 301(n)(3) provides that an application for alternative requirements under section 301(n) shall not stay the facility's obligation to comply with the effluent limitations guideline or standard which is the subject of the application. This provision is intended to prevent EPA or the State, in the case of direct dischargers, or EPA, the State or the POTW, in the case of indirect dischargers, from delaying issuance of the NPDES permit or pretreatment implementation mechanism containing the nationally applicable limitations or standards during the pendency of an application. In addition, de facto stays of applicable provisions may not be provided.

The purpose of the FDF provision is to correct past errors made by EPA in defining categories and subcategories of dischargers under section 304(b) of the Act. EPA will probably make fewer of such errors in the future, especially since the provisions in section 301(n)(1)(B) remove any incentive a facility owner or operator may have to withhold relevant information during the rulemaking phase.

The availability of FDF applications is limited to primary industrial categories identified in permit regulations issued under section 402 of the Act as of the date of enactment of the Clean Water Act Amendments of 1985. A list of primary industry categories is currently contained in the NPDES regulations (40 CFR Part 122, Appendix A). FDF applications, or approvals after the date of these changes, are limited to facilities contained in these primary industry categories. EPA has expanded this list from 34 to 37 categories, with the three new categories being a subset of the listed categories. All of these categories are intended to be included in this requirement.

Substantial Federal resources are being devoted to processing applications for modifications authorized by the Clean Water. Section 301(o) requires the Administrator to establish a system of fees to recover the cost of processing these applications. It is expected that applications will be accompanied by an appropriate fee and will be considered incomplete until the fee is paid.

Applicants with limited financial resources may be less capable of paying these fees than are larger applicants. It is not the intention to deny access to Clean Water Act modifications to applicants with a limited ability to pay fees. The Administrator may, in appropriate discretion, develop a tiered or sliding scale fee structure so long as the aggregate amount of fees collected reflects the Federal resources actually expended in processing such applications.

Though the fees collected under this requirement will be deposited in the miscellaneous receipts of the Treasury, the EPA budget should provide resources for processing modification applications that reflect the fees received by the Treasury.

The Administrator may not use the authority of this section to modify effluent standards or prohibitions issued pursuant to section 307(a)(2) of this Act, the general prohibited discharge standards in 40 C.F.R. § 403.5 (or other requirements implementing such standards), or effluent limitations guidelines or pretreatment standards applicable to facilities other than the primary industrial categories identified in the permit regulations issued under section 402 of the Act and in effect on the date of enactment of this amendment.

The FDF provision is intended to be available for modification of requirements for conventional, nonconventional, and toxic pollutants. Consistent with this objective, section 301(1) of the Act, which excludes toxic pollutants from variances or modifications under the Act, is amended to allow FDF modifications for toxic pollutants. This amendment to section 301(1) does not in any way weaken the application of the subsection to modification provisions of the Act other than the FDF provision (section 301(n)).

The Administrator may not delegate the authority provided by this subsection to any State, though the Administrator should obtain the concurrence of a State with an approved NPDES or pretreatment program before approving any alternative requirement under this subsection.

The owner or operator of a facility has the burden of proving to the satisfaction of the Administrator that the facility is eligible for an alternative requirement under this subsection. The Administrator's decision to promulgate or deny an alternative effluent limitation guideline or categorical pretreatment standard under this subsection shall be subject to judicial review pursuant to section 509(b)(1) of the Act.

All of these provisions are to be self implementing, and effective upon the date of enactment of the Clean Water Act Amendments of 1985. The Administrator is encouraged to amend the appropriate regulatory provisions to make them consistent with these requirements; however, the failure of the Administrator to make such revisions will not affect the implementation of these provisions.

WATER QUALITY-BASED EFFLUENT LIMITATIONS AFTER BAT

The reported bill modifies sections 302, 303, 304, and 305 of the Act, to provide for the development of water quality based effluent limitations after the implementation of best available technology (BAT).

States are required to undertake a progressive program of toxic pollutant load reduction where BAT is not sufficient to meet State water quality standards and support public health and water quality objectives of the Act. The following scheduled requirements are included in this provision:

(1) Under new section 305(c), within two years of enactment of the Clean Water Act Amendments of 1985, States must identify those water bodies within or adjacent to them which will not meet State water quality standards because of toxic pollutants after the implementation of BAT.

(2) Under new section 303(c)(2)(B), whenever a State reviews or revises existing water quality standards or adopts new standards, it must adopt numerical criteria for those toxic pollutants which could reasonably be expected to interfere with designated water uses and set such criteria at the levels necessary to support such uses. States shall establish specific numerical criteria based on the Environmental Protection Agency's existing national water quality criteria and other sources. A State may also utilize toxic pollutant criteria based on biomonitoring techniques or assessment methods to supplement numerical criteria. While numerical criteria are immediately required for toxic pollutants which are highly persistent, bioaccumulative, or known or suspected carcinogens, mutagens, or teratogens, for other toxic pollutants biomonitoring can be used until numerical criteria can be developed.

(3) Under new section 304(a)(8), the Administrator, in consultation with appropriate State agencies, is to provide information within two years of enactment of the Clean Water Act Amendments of 1985, on methods of establishing criteria with biomonitoring assessment techniques.

(4) Under new section 303(d)(4), not later than two years after the identification of water bodies with toxic pollutant water quality standard problems, States must establish effluent limitations for individual dischargers into such water bodies, based on established toxic pollutant criteria and adequate to attain water quality standards. These effluent limitations must be incorporated into permits which must be complied with no later than three years after the establishment of the effluent limitation.

Section 302(a) of the Act, as amended by the reported bill, provides for effluent limitations to be established whenever, in the judgment of the Administrator, a water body will not attain or maintain the level of water quality which will assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water, even after the application of all the technology-based requirements of the Act, or whenever such a water body has been identified under new section 305(c)(1)(B). For such water bodies, the Administrator must establish effluent limitations for any point sources interfering with attainment or maintenance of that level of water quality providing a degree of control which can reasonably be expected to contribute to attaining or maintaining the required water quality.

Ordinarily, State water quality standards established or revised under section 303 designate the uses specified in section 101(a)(2) of the Act, and if implemented through adequate criteria, waste load allocations, and effluent limitations in permits, will protect the level of water quality addressed by section 302(a). The Administrator is to use the authority of section 302(a), however, where compliance with best available technology requirements or the State water quality standards process are not attaining this level of water quality, due to point sources.

Under section 302(b), as amended, the Administrator is permitted, with the concurrence of the State, to modify effluent limitations for non-toxic pollutants established by the Administrator under section 302(a) if the applicant demonstrates at the time the effluent limitation is proposed that there is no reasonable relationship between the economic and social costs and the benefits to be obtained from achieving the proposed limitation.

The Administrator, with the concurrence of the State, may also modify effluent limitations established under section 302(a) for discharges of toxic pollutants, for single period not to exceed five years, if the applicant demonstrates at the time the effluent limitation is proposed that the modified requirement represents the maximum degree of control within the economic capability of the owner of the particular source, and will result in reasonable further progress (beyond BAT) toward attaining the level of water quality specified in section 302(a). The provisions of new section 302(b)(2) apply only to effluent limitations established by the Administrator under section 302(a).

Section 303 of the Act is the primary mechanism for the development of State water quality standards and effluent limitations based on them. In developing standards under that section, States are authorized to consider the economics of achieving such standards only as allowed under EPA's regulations established pursuant to section 303. Section 302 is not intended to undercut or in any way affect the development of water quality standards under section 303 nor the imposition of section 301(b)(1)(C) of the Act. Rather, it is a supplemental provision which directs the Administrator, now with the concurrence of the State, to impose effluent limitations which assure the attainment or maintenance of water quality for the protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and recreational activities in and on the water, in situations where the adopted water quality standards do not assure the attainment and maintenance of such uses, including in some instances those waters which are to be listed under new section 305(c). The provisions of section 302(b)(2) authorizing the modification of effluent limitations apply only to the effluent limitations established under section 302(a).

New section 304(1) requires the Administrator to publish within 12 months a plan (1) establishing a schedule for the annual review and revision of effluent guidelines already promulgated; (2) identifying categories of sources of toxic or nonconventional pollutants for which guidelines have not yet been promulgated; and (3) establishing a schedule for promulgation of those guidelines, no later than 3 years after identification of the categories. Guidelines are required for any category of sources discharging significant amounts of toxic pollutants. In this use, "significant amounts" does not require the Administrator to make any determination of environmental harm; any non-trivial discharges from sources in a category must lead to effluent guidelines. This requirement does not affect the Agency's obligations to publish effluent guidelines under the toxic pollutant Consent Decree.

INDIRECT DISCHARGE OF CONVENTIONAL POLLUTANTS

In cases where a publicly owned municipal treatment works is not able to meet the requirements of its permit because of operational, mechanical, or design failures, the Administrator should not require pretreatment of conventional pollutants by indirect discharges to allow the treatment works to meet the conditions of their permits. The Committee recognizes that in such circumstances the burden of correction of the problem may more appropriately lie with the publicly owned treatment works itself through adjustment of its facilities or operation. This provision does not modify or limit the Administrator's authority and obligation to promulgate pretreatment standards which regulate pollutants which interfere with a publicly owned treatment works. It does not affect a discharger's obligation to comply with Federal, State, and local pretreatment requirements. The Administrator's enforcement authorities against indirect dischargers or municipalities under the Act are not limited by this provision. Nor does it restrict a POTW from imposing any treatment conditions it chooses on its contributors.

CIVIL AND CRIMINAL PENALTIES

This section amends sections 309 and 404 of the Clean Water Act relating to civil and criminal penalties.

Civil penalties

Sections 309 and 404 of the Act are amended to increase the civil judicial penalty limit from $10,000 to $25,000 per violation, to clarify that each distinct violation is subject to a separate daily penalty assessment of up to $25,000, and to clarify that violations of pretreatment program requirements are subject to civil penalties.

The increase in the maximum daily penalty would make the Clean Water Act consistent with penalty limits under other environmental statutes and reflects the serious nature of these violations. The amendment would also expressly require the courts to consider a number of factors, including, in particular, the economic benefit gained as a result of the violation. Violators should not be able to obtain an economic advantage vis-a-vis their competitors due to their noncompliance with environmental laws. The determination of economic benefit or other factors will not require an elaborate or burdensome evidentiary showing. Reasonable approximations of economic benefit will suffice. Other objective factors customarily taken into account in assessing penalties, such as the history of violations, good faith efforts to comply and economic impact on the violator, also may be taken into account in arriving at an appropriate penalty.

Administrative civil penalties

The Clean Water Act currently provides the Administrator with two civil enforcement options. When faced with a violation of the Act, the Administrator may issue an order requiring compliance or the Administrator may bring a civil action in the appropriate U.S. district court for penalties and injunctive relief.

These amendments give the Administrator a third option: to assess administrative civil penalties of up to $10,000 per day for each violation of a Clean Water Act requirement. Thus, a discharger who violated three daily maximum permit limits on a day could be subject to a maximum penalty of $30,000 for that day's violations. The total maximum administrative penalty that may be assessed under this provision is $125,000 for an individual enforcement action.

This authority to issue administrative penalty orders is intended to complement and not to replace a vigorous civil judicial enforcement program. Civil judicial enforcement is a keystone of successful enforcement of the Act and necessary for cases involving novel issues of law or contested penalty assessments, cases requiring injunctive relief, serious violations of the Act, or large penalty actions, and cases where remedies are sought requiring significant construction or capital investment. The addition of this enforcement tool is based in part on the Agency's assurance that it does not intend to retreat from vigorous judicial enforcement of Clean Water Act violations.

The addition of administrative civil penalties should, therefore, increase the total number of enforcement actions without any corresponding decline in the number of judicial enforcement actions taken by the Administrator. The Administrator is not expected to use this new authority for cases that would otherwise have been tried in court. Three provisions, in particular, reflect the Committee's intent on this score. First, this new authority is designed to address past, rather than continuing, violations of the Act. Continuing violations are more appropriately addressed by abatement orders or injunctive actions and, if EPA seeks both civil penalties and injunctive relief, one judicial action should be filed. Second, this new authority includes a cap on penalty amounts and a lower daily limit than judicial penalties. These limitations are intended to assure that violations of greater magnitude are handled judicially and pursued in a judicial forum. Third, this new authority to administratively assess civil penalties sunsets after five years. This will provide ample time to review the experience with administrative civil penalties before further administrative penalties are assessed. Such review will be designed to assure that administrative civil penalties have not become a substitute for judicial action, that such penalties are no less stringent than those which would be assessed in court for the same violations, and that such penalties are both promptly assessed and promptly paid.

Administrative penalties could provide greater deterrent value than an administrative order for a violation that does not warrant the more resource intensive aspects of judicial enforcement. Many

Clean Water Act violations are straightforward, self-reported and likely uncontested by the violator. The administrative penalty authority is expected to be exercised where violations are clearly documented and easily corrected and will likely be uncontested by the violator.

To serve its intended function, this administrative enforcement tool should be tailored to the less complex cases for which it is intended. Administrative enforcement should be as flexible and unencumbered by procedural complexities as possible, consistent with due process considerations while providing for effective input by citizens who may be affected by the violations. Administrative cases should be resolved promptly.

The procedures adopted in the reported bill strike the appropriate balance between streamlined procedures and basic fairness. Prior to issuing an administrative order assessing a civil penalty, the Administrator must give the person against whom the penalty is to be assessed written notice of the proposed penalty and an opportunity to request, within 30 days of receipt of such notice, a hearing. Such a hearing includes the right to a reasonable opportunity to be heard and to present evidence. Because administrative penalty assessments will be used in smaller cases and often will be based on discharge monitoring reports routinely submitted by permittees, formal administrative procedures strictly in accordance with the formal adjudicatory procedures of the Administrative Procedures Act are not required. EPA therefore has the flexibility to streamline its decisionmaking process and procedural rules through promulgation of procedural regulations that provide appropriate due process protection.

There are several safeguards in this provision to prevent abuse of the administrative penalty authority, such as significant violators escaping with nominal penalties. The Administrator is required to provide the public with notice of the proposed penalty assessment and a reasonable opportunity to comment on the proposal. Public notice of such proceedings must be given in a manner that will apprise interested citizens of the proceeding. If a hearing on the proposed assessment is conducted, any citizen who commented on the proposal shall be given notice of such a hearing and a reasonable opportunity to be heard and to present evidence at the hearing. If no hearing is held, the Administrator must set aside the penalty order and provide a hearing when presented with evidence that the order was inadequate or improper. The Administrator shall construe this provision liberally so as not to place a heavy burden on citizens seeking a hearing.

An order assessing a penalty becomes final and nonappealable 30 days after its issuance or, in the case of a post-assessment request for a hearing, 30 days following the final action by the Administrator. While the Committee bill allows for judicial review without the necessity of holding a hearing in every case, it is expected that some parties will request hearings. If no hearing is requested by a private party, or held by the Agency sua sponte, the record for review will include the proposed assessment, supporting factual documentation and comments filed during the comment period. If a hearing is held, however, it is expected that evidence to dispute the proposed assessment will be introduced at the hearing and will become part of the administrative record.

The potential for overlap between citizen enforcement suits and administrative civil penalties is specifically addressed. Citizen suits are a proven enforcement tool. They operate as Congress intended—to both spur and supplement to government enforcement actions. They have deterred violators and achieved significant compliance gains. In the past two years, the number of citizen suits to enforce NPDES permits has surged so that such suits now constitute a substantial portion of all enforcement actions filed in Federal court under this Act.

This amendment therefore strikes a balance between two competing concerns: The need to avoid placing obstacles in the path of such citizen suits and the desire to avoid subjecting violators of the law to dual enforcement actions or penalties for the same violation. It states that no one may bring an action to recover civil penalties under sections 309 (b) and (d), 311(b), or 505 of this Act for any violation with respect to which the Administrator has commenced and is diligently prosecuting an administrative civil penalty action, or for which the Administrator has issued a final order not subject to further judicial review (and for which the violator has paid the penalty). This limitation applies only to an action for civil penalties for the same violations which are the subject of the administrative civil penalties proceeding. It would not apply to an action for civil penalties for a violation of the same requirement of the Act that is not being addressed administratively or for a past violation of another pollutant parameter (even one resulting from the same discharge which is the subject of the administrative civil penalty proceeding). In addition, this limitation would not apply to: 1) an action seeking relief other than civil penalties (e.g., an injunction or declaratory judgment); 2) an action under section 505(a)(1) of this Act filed prior to commencement of an administrative civil penalty proceeding for the same violation; or 3) a violation which has been the subject of a notice of violation under section 505(b)(1) of this Act prior to initiation of the administrative penalty process, provided that, in the latter case, an action under section 505(a)(1) of this Act is filed within 120 days of the notice of violation.

The Agency can prevent duplicate proceedings by intervening in the ongoing citizen enforcement suit or by bringing its own judicial action before a citizen suit is filed. This amendment does not preclude administrative or judicial enforcement actions by the Administrator for any violations not specifically penalized by the initial enforcement action.

Judicial review of a penalty assessment is available to any person against whom a civil penalty order is issued as well as to any citizen who commented on a proposed assessment. Providing citizens with a right to appeal will serve as an added safeguard to assure that the Agency assesses appropriate penalties for violations of the Act that take into account the seriousness of the violation, as well as other factors enumerated in the bill, and serve to deter noncompliance. Judicial review is not to be de novo review, but will be based upon whether the Agency's findings of a violation is supported by substantial evidence in the administrative record and whether the assessment of the penalty is an abuse of discretion.

Where it is clear that the Agency has assessed such an unreasonably low penalty as to constitute an abuse of discretion, the court may choose to impose its own higher penalty rather than exercise its authority to remand. District courts are free to remand cases in appropriate circumstances.

The penalty collection proceeding will not be an opportunity to contest the penalty assessment. The discretion to compromise, mitigate or abandon such claims continues to reside with the Attorney General.

Criminal penalties

Knowing violations of the Act have caused serious environmental harm and millions of dollars of damage to private and public property. In some cases, they have raised the clear potential for loss of life and serious personal injury. A stronger criminal sanction is needed under the Clean Water Act to deter these violations.

These amendments would elevate penalties for knowing sanctions to the Clean Water Act for persons who knowingly or negligently introduce into a sewer system or a POTW, a pollutant or hazardous substances which such person knew or reasonably should have known could cause personal injury or property damage. Criminal liability shall also attach to any person who is not in compliance with all applicable Federal, State and local requirements and permits and causes a POTW to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of the Act.

The felony level penalties for knowing violations (not less than $5,000 nor more than $50,000 per day violation and imprisonment for up to three years) are more closely comparable to the levels provided by the 1984 amendments to the Solid Waste Disposal Act RCRA and reflect the commensurately serious nature of the violations to be criminally prosecuted under the Clean Water Act. Currently, a knowing discharge onto the ground of hazardous wastes could subject discharger to felony sanctions under RCRA. However, the same discharge into a sewer system or a POTW might subject the discharger to the lesser misdemeanor provisions of the Clean Water Act. The result is an unintentional incentive to dump hazardous substances into sewer systems or POTWs. The addition of these criminal sanctions will aid in protecting these sewer systems and POTWs. Substantial Federal monies are invested in many of these POTWs. Existing misdemeanor penalties are retained to address those negligent violations which merit lesser punishment.

This section also adds to section 309(c) enhanced felony penalties for certain life-threatening conduct. The concept of a knowing endangerment crime is found, as well, in section 3008(e) of RCRA. This new offense under the Clean Water Act is based upon violation of certain predicates in the Act. In the event of such knowing violation, the amendment subjects to greater punishment one who knows that he thereby placed another person in imminent danger of death or serious bodily injury. The criminal penalties that apply upon conviction (up to 15 years imprisonment plus fine of up to $250,000 for individuals, a fine of up to $1,000,000 for organizations) are equivalent to the RCRA knowing endangerment provision, as recently amended.

The reason for this addition is that the mishandling of dangerous materials in ways within the purview of this Act can pose substantial danger to public health and safety, just as in situations regulated by RCRA. Therefore, knowing endangerments through water related violations of Federal law should be discouraged as strongly as possible and should be subject to extraordinary sanctions when they occur.

The differences between the knowing endangerment concept here and its earlier formulation in RCRA reflect intervening prosecutorial experience. For example, this provision does not have the unique state of mind definition found in the "Special Rule" in section 3008(f)(1) of RCRA, because the unusual nature of that subsection has discouraged prosecutions under section 3008(e). It is more appropriate that the "knowing" element of a violation be measured against the standard established by prevailing case law, as it is for any other Federal crime sharing the same state of mind element. Also, there is no subsection corresponding to the "Special Rule" in RCRA section 3008(f)(4) regarding defenses. That provision is an unnecessary restatement of existing criminal law and only raises a potential for misunderstanding and invites unnecessary litigation.

The maximum term of imprisonment contained in the provision of the current law penalizing the knowing making of false statements, representations and certification, or tampering with monitoring equipment required under the Act, is increased from six months (a petty offense) to two years (a felony). The provision doubling the maximum punishment with respect to both fine and imprisonment for second and subsequent convictions under the same pararaph of the Act is extended to this provision as well as to the knowing endangerment provision.

This amendment also extends and consolidates criminal sanctions involving violations of the provisons of section 405 governing disposal of sewage sludge, violations of requirements imposed in State pretreatment programs approved under section 402(b)(8), violations of section 318 permits, and violations of section 404 permits issued by the Secretary of the Army or by a State.

Strong public support exists for aggressive enforcement action in cases of environmenal misconduct. The addition and strenthening of criminal sanctions in the Act for knowing violations of the law will reflect this public concern and should dispel any perceptions that a knowing violation of the Act is not a serious offense.

PARTIAL NPDES PROGRAM APPROVAL

This section amends section 402 of the Clean Water Act to permit the Administrator of the Environmental Protection Agency to delegate a portion of the National Pollutant Discharge Eliminatin System program to a State under conditions.

A State would have two options. Under either option, the Governor must submit a plan to the EPA for approval. Such a plan must either show that the State is prepared to administer program components representing a significant part of the State program, and be prepared to make all reasonable efforts to assume administration of the toal program within the ensuing five years, or the plan must provide for administration of a permit program for all of one or more discharge categories. Under this section option, the plan must cover all catetories of discharges and represent a complete permit program for all categories of discharge under the jurisdiction of the State.

In the event that a State wishes to return NPDES program administration authority to the Federal Government, or in the event the Administrator withdraws approval of a state-operated program, the entire program must be returned to the Federal Government.

Current law with respect to the assumption of NPDES program authority by States has been interpreted to require the immediate assumption of the entire NPDES program as it is administered by EPA. Consequently, States with permitting responsibilities divided among more than one agency or with resource difficulties, either of which limits the State from assuming the entire program, have been precluded from assuming the NPDES program.

For example, the State of Texas divides wastewater permits between the Texas Department of Water Resources and the Texas Railroad Commission. While the Texas Department of Water Resources, which does the vast majority of permitting, has sought NPDES assumption, the Texas Railroad Commission, which is responsible for oil and gas exploration and production permitting, has only recenly begun seeking assumption. Current law has thus prevented the Texas Department of Water Resources from obtaining assumption of its portion of the program.

States should be tested against their ability to operate an effective permit program and should be encouraged to assume NPDES permitting authority. The bill includes modifications to enhance the opportunities for States to develop NPDES programs and assume this responsibility.

JUDICIAL REVIEW AND AWARD OF FEES

This section revises the provisions of section 509 of the Clean Water Act governing judicial review of certain actions of the Administrator of EPA and provides for the awarding of costs of litigation in actions brought pursuant to section 505 or 509 to prevailing or substantially prevailing parties.

The purpose of the changes in section 509(b)(1) is to clarify the proper venue for court of appeals review of certain actions of the Administrator under the Clean Water Act and to extend the period within which an application for review of such actions must be filed from ninety to one hundred and twenty days.

Section 110(a)(1) provides that proper venue for judicial review under section 509 of the Act shall be in the Circuit Court of Appeals of the United States for the Federal judicial district in which the applicant resides or transacts business which is directly affected by the action in question.

Currently section 509(b)(1) provides for venue in the Circuit Court of Appeals of the United States for the Federal judicial district in which the applicant "resides or transacts such business". This phrase is inherently ambiguous because the word "such" has no antecedent. The legislative history of this phase is also ambiguous and is not consistent with the plausible interpretation, urged by the Department of Justice, that the words "such business" refer to business which is directly affected by the action which is the subject of the application for review. The two courts of appeals which sought to construe this phrase, the Fifth Circuit in *Tenneco Oil Co.* v. *EPA*, 592 F. 2d 897 (1979), and the Eighth Circuit in *Peabody Coal Co.* v. *EPA*, 522 F. 2d 1152 (1975), ultimately avoided ruling on its meaning and proper venue for section 509(b) cases remains unsettled. In order to eliminate, or at least reduce, the potential for threshold litigation over proper venue, the Committee amendment changes the venue provision so that the language conforms to the reading of current law which has been suggested by the Department of Justice, The intention of the Committee is to allow the filing of an application for review in the circuit in which the applicant resides, i.e., has his principal place of business, or where he transacts business which is directly affected by the action of which he complains. For example, in a case in which the action complained of is a denial of a permit for a proposed facility, the direct effect of the action would be felt only at the location of the proposed facility, even though indirect effects of the action might be felt at other facilities of the company.

Section 110(a)(2) changes from ninety to one hundred and twenty days the period within which an application under section 509 of the Act for judicial review of an action must be made.

The purpose of this change is to assure that persons who will be significantly affected by an action of the Administrator will have ample opportunity to assess the consequences of such action and if necessary file an application for review prior to the expiration of the time period. The Committee has previously considered this issue in a different but similar context (Senate Report No. 97-666 at pp. 94-5) and has concluded that one hundred and twenty days is a reasonable period within which to require the filing of an application for review.

Section 10(b) establishes a random selection procedure, to be administered by the Administrative Office of the United States Courts, to determine in an orderly fashion the court of appeals in which an agency action is to be reviewed when applications for review have been filed in two or more courts of appeals. Following the selection of a court of appeals, other courts in which applications have been filed are directed to promptly transfer such applications to the court in which the agency record has been filed. Notwithstanding the outcome of the random selection procedure, any court in which an application has been filed would retain the power to transfer the application to any other court of appeals for the convenience of the parties or otherwise in the interest of justice. The court of appeals would also be given the power to award costs of litigation to a prevailing or substantially prevailing party when such an award is appropriate.

Section 10(c) limits the award of costs of litigation in citizen's suits under section 505(d) of the Act to prevailing or substantially prevailing parties.

The purpose of the random selection procedure is to eliminate the "race to the courthouse" phenomenon and provide for an orderly means of consolidating applications for review of the same agency action. The Committee wishes to emphasize that this process is not intended to preclude any court of appeals from exercising its inherent power to transfer an application for review to any other court of appeals for the convenience of the parties or otherwise in the interest of justice.

Section 509(b)(3)(B), as amended, provides new authority for any court of appeals to grant a temporary stay of the effective date of a final agency action pending selection of the court of appeals in which the action will be reviewed. However, it is not the intention of the Committee that stays should be granted unless the same requirements that ordinarily apply to an application for a stay of an agency action are fully satisfied.

The purpose of the new section 509(b)(4) and the amendment to section 505(d) is to clarify the circumstances under which costs of litigation may be awarded. In *Sierra Club* v. *Gorsuch,* 672 F. 2d 33 (D.C. Cir 1983), *rev'd sub nom., Ruckelshaus* v. *Sierra Club,* 51 U.S. L.W. 5132 (July 1, 1983), the court of appeals held that it was "appropriate" to award attorney's fees under the Clean Air Act to the petitioner even though the government prevailed on all issues. The Committee does not believe that it is reasonable or appropriate to compel either the government or a private party to pay the costs of an opposing party to a lawsuit when the opposing party has not prevailed on the issues. Accordingly, these amendments would limit the awarding of costs under the Clean Water Act to prevailing or substantially prevailing parties.

These amendments are not intended to preclude the awarding of costs to a partially prevailing party with respect to the issues on which that party has prevailed, if such an award is deemed appropriate by the court. Nor does the Committee intend to authorize an award of costs to a party who intervenes in a case and, although technically on the prevailing side, fails to make a substantial contribution to the successful outcome of the case.

In addition, the Committee recognizes that a party may "prevail" by achieving a successful settlement.

NONPOINT SOURCE POLLUTION

This section establishes a new section 319 in the Clean Water Act to require development of implementation programs to control nonpoint source pollution. Except for two elements, this section is identical to the legislation reported by the Committee in the 98th Congress.

First, it requires a State, in identifying the best management practices which will be undertaken to reduce nonpoint source pollution, to take into account the impact of the proposed practice on groundwater quality. Second, it allows funds reserved under section 319(d)(2)(B) to be used for assessment of the relationship between nonpoint source pollution and groundwater contamination. These provisions reflect the Committee's recognition of the importance of groundwater resources.

Section 319(a)(1) requires each State, individually or in combination with adjoining States, to submit a proposed nonpoint source pollution management program to the Administrator of the Environmental Protection Agency within 18 months of enactment of this legislation. Such a program must:

(A) identify waters which are not expected to attain applicable water quality standards or Clean Water Act goals without control of nonpoint sources;

(B) designate categories, subcategories, or particular nonpoint sources that contribute significant nonpoint pollution to those waters;

(C) identify best management practices (BMPs) which will be undertaken to reduce pollution in each category or subcategory taking into account the impact of the proposed practice on groundwater quality.

(D) identify programs to be used to achieve implementation of identified BMPs, by the designated nonpoint sources, including nonregulatory or regulatory programs for enforcement, technical and financial assistance, education, training, technology transfer, and demonstration projects;

(E) include a schedule containing annual milestones for utilization of the programs identified in (D) and implementation of the BMPs identified in (C) at the earliest practicable date;

(F) assure that existing State laws are adequate to carry out the proposed program, or contain a stated intent to seek additional needed authority together with a proposed schedule; and

(G) identify Federal financial assistance programs and Federal development projects to be reviewed by the State for their consistency with its proposed program.

The provision that adjoining States may develop proposed programs together is intended to promote cooperative actions among States to deal with water quality problems in downstream States when those problems are, in part, a result of nonpoint source loadings in upstream States. Downstream water quality problems may result from transboundary delivery of pollutants that are not sufficient to cause identification of the waterbody by the upstream State, but which nonetheless contribute substantially to water quality problems in the downstream State. Until those upstream sources of nonpoint pollution are brought into the program, the nonpoint source pollution problem in the downstream State may not be adequately addressed, as no measure of control applied in the downstream State will affect the pollution in the upstream State. In such cases, the upstream State may have little incentive to incur program costs that will result in water quality benefits primarily to the downstream State. The Administrator is given the authority to provide extra funding for such interstate cooperative efforts in section 319(d)(2)(B). A joint or cooperative management program may also be appropriate when the affected water body is shared by more than one State, e.g., an estuary lying in two or more States or a lake or river that forms the boundary between two States.

Subsection (a)(1)(A) requires each State to identify those particular waters within its boundaries which, after implementation of point source controls, will not attain or maintain water quality standards or the goals and requirements in the Act without controlling nonpoint sources of pollution. The State need not demonstrate that the nonpoint sources of pollution are the sole cause for the water quality standards not being attained or maintained. The fact that the standards are not likely to be attained or maintained under existing conditions in the reasonably near future, and that there are loadings of pollutants from nonpoint sources of pollution that can reasonably be expected to be contributing to the water quality problems, should suffice for a State to identify such waters under subsection 319(a)(1)(A). In identifying such waters, the State should not focus only on the immediately adjacent waters to nonpoint sources, but also consider downstream segments, lakes, and other water bodies where such pollutants may accumulate and cause water degradation.

The reference both to water quality standards and to the goals and requirements of the Clean Water Act arises from the fact that not all water quality standards yet reflect the Act's goals and requirements. In such cases, identification and control of nonpoint sources can contribute to improvement in water quality and upgrading or water quality standards.

In section (a)(1)(B), the term "significant" is inserted to exclude trivial sources of pollutants or sources of pollutants which are not related to the water quality problems identified in subparagraph (A). The term "categories" in this subsection could include sources such as cropland, rangeland, pastureland, forestland, construction sites, industrial sites, mines, residential areas, streets, roads, highways, other developed land, and wild areas. Within each of these categories, subcategories can be defined on the basis of characteristics such as geographical location, type of activity, size of facility, topography, and other factors. The State has broad discretion to establish categories and subcategories that make sense in terms of the types of nonpoint source pollution problems and the type program that the State will implement to control them. However, the categorization must be sufficiently comprehensive to include all significant sources.

"Particular nonpoint sources" could be identified when they, in and of themselves, are significant contributors of pollutants, or in some way are sufficiently unique that they cannot reasonably be included in one of the categories or subcategories.

The term "best management practices" in subsection (a)(1)(C) is left undefined in the bill because of a concern that any definition would limit the States' flexibility and perhaps undercut existing programs in which best management practices (BMP's) already are being implemented. The term encompasses a broad array of management practices that can be undertaken, alone or in combination, to reduce nonpoint sources of pollution. For example, in soil conservation programs over forty BMP's have been identified, including conservation tillage, grassed waterways, cover crops, undisturbed field perimeters near waterways, and terracing. The selection of the appropriate BMP's in a particular instance would depend upon soil type, topography, desired crop, costs of implementation, and other factors. Simple and cost-free changes in agricultural practices, such as careful scheduling and application of fertilizer and pesticides, may reduce runoff of these pollutants, thereby resulting in cost savings to the farmer.

Best management practices have also been identified for reducing runoff from urban areas (e.g., storm water containment structures), construction areas (e.g., erosion barriers such as straw bales and dikes), silviculture areas (e.g., careful road placement, culverting, grassing of abandoned roads and skid trails), and grazing lands (e.g., herd and vegetation management).

States are required to consider the impact of management practices on groundwater quality. Because of the intimate hydrologic relationship that often exists between surface and groundwater, it is possible that measures taken to reduce runoff of surface water containing contaminants may increase transport of these contaminants to groundwater. The State should be aware of this possibility, when defining best management practices, especially in aquifer recharge areas.

Subsection (a)(1)(D) allows a State for flexibility to construct a management program containing regulatory or nonregulatory components, or a mixture of the two. The list of possible program elements is not intended to be exclusive. It is expected that States will differ in the program strategies they adopt. However, a State program must have a clear purpose: to achieve implementation of BMP's by the identified sources. The State is expected to show how its management program will provide reasonable assurance that appropriate control measures will actually be adopted by the sources identified in subsection (a)(1)(B). Further, the State is required to commit itself to a schedule containing milestones for implementation of BMP's by sources. This is a requirement that the State take responsibility for the effectiveness of its program in terms of getting BMP's implemented by sources, as distinct from merely committing to carry out its identified program activities. The Administrator, in awarding subsequent program grants pursuant to subsection (d), must consider the State's record in meeting these commitments and determine that the State is satisfactorily implementing its program.

Milestones for both program implementation and BMP implementation by sources must be established to provide for implementation at the earliest practicable date. This requirement reflects the importance of the nonpoint source pollution problem and is intended to demonstrate congressional intent that BMP's be implemented expeditiously. Consistent with this general requirement, States may establish different milestones for different categories of sources. No single date or statutory schedule is included in order to allow the State to take account of variations in the number and types of sources and pollutants and differing degrees of difficulty in achieving pollutant reductions. Similarly, different States may commit to different schedules based on characteristics of the State program.

In subsection (a)(1)(F), the term "as expeditiously as practicable" takes into account the current laws of the State or local governments and the schedule for meetings of the legislature, but indicates that, taking account of these factors, the needed authorities will be adopted as quickly as they can.

The bill also vests authority with the States in subsection (a)(1)(G) to identify Federal financial assistance programs and Federal development projects for which the State will review individual assistance applications and development projects for their effects on water quality to determine if they are consistent with the State's nonpoint source pollution management program.

This subsection is based on the current provisions in Executive Order 12372. This Executive Order, issued by President Reagan, establishes procedures by which State authorities may comment upon applications for Federal assistance and Federal development projects to assure that the federally supported activities and projects are consistent with State needs and objectives. This bill assures that the provisions of the Executive Order, as in effect on September 17, 1983, will be applicable to the State's implementation of this review process, with respect to its nonpoint source management program, regardless of any subsequent revisions of the Executive Order. The bill also allows States to designate any Federal assistance program or development project listed in the most recent Catalog of Federal Domestic Assistance, rather than just those programs and projects subject to the current Executive Order 12372. The purpose of this provision is to allow the State's review to include any Federal program or project that the State determines needs to be reviewed for consistency with its nonpoint management program. This subsection, in conjunction with subsection (f)(1), builds upon established procedures for State review of Federal Activities. These subsections provide the States with an important tool to assure that proposed Federal assistance and development projects are implemented in a manner which the State deems consistent with its nonpoint source pollution management program.

Subsection (a)(2) gives the States authority to use information developed under other pertinent sections of the Clean Water Act in the development of their programs, particularly the section 208(b) waste treatment management plans, if the State determines those plans to be consistent with the goals and objectives of this new section. Subsection (a)(3) gives the States authority to make use of local agencies or organizations in the development and implementation of their programs. This would include agencies receiving funding under section 205(j) and soil conservation districts.

In many cases, information and institutional relationships developed under section 208 planning process will be relevant to, and consistent with, the requirements and objectives of this bill. Many States used the section 208 planning process to gather needed data about nonpoint source pollution and to promote local and regional cooperative pollution control efforts. In such cases, the State is encouraged to build upon these program elements in constructing the program required by this bill. However, the bill does not require the use of section 208 plans or local agencies and organizations because some State programs have evolved well beyond the section 208 planning effort, and also because some States gave inadequate or inappropriate attention to nonpoint sources in their 208 plans. In any case, the State has the flexibility to select the program elements that will most effectively fulfill the requirements and objectives of this bill.

Subsection (b) describes the responsibilities of the Administrator of the Environmental Protection Agency subsequent to the submission of a State's proposed management program. The Administrator is given a maximum of six months after receipt of a State program in which to determine its compliance with the requirement of subsection (a)(1). If he determines that it does not comply, he must notify the State of any modifications necessary to obtain approval. The State is then given three additional months to submit a revised program, to be approved or disapproved by the Administrator within three months of receipt.

If the Administrator determines that a State management program meets the requirements in subsection (a)(1), he must approve the program. If he fails either to approve or request modification of a submitted State program within six months of receipt, the program is deemed to be approved. Likewise, if the Administrator fails to approve or disapprove a program revised at his request within three months of receipt, such a revised program is deemed to be approved. This provision is intended to assure that implementation of programs to control nonpoint sources of pollution are not delayed because of inaction on the part of the Administrator.

In determining whether the proposed program meets the requirements and objectives of subsection (a)(1), the Administrator should take into account any public comments he has received, including those of downstream States that may be affected by the program. The bill does not provide precise criteria for program approval because it is expected that programs may vary from State to State. However, the Administrator's review should involve considerably more than a checklist of required program elements. The Administrator must review submitted programs in light of the objective of the bill, which is to achieve reduction of nonpoint source pollutant loadings by the implementation of best management practices by sources and to do so at the earliest practicable date. Before approving the program and awarding Federal grants to support its implementation, he should be persuaded that the program is capable of meeting this objective.

Subsection (c) pertains to States which fail to submit a nonpoint source management program consistent with subsection 319(a)(1). After the Administrator notifies such State, he must carry out the requirements of section 319(a)(1) (A) and (B) on behalf of that State. The Administrator is thus required to identify waters within the noncomplying State exhibiting nonpoint pollution problems and designate categories or subcategories of significant contributors to that pollution. Any actions of the Administrator pursuant to this subsection shall be reported to Congress.

The purpose of this provision is to make Congress aware of the extent of nonpoint source pollution problems that are not being addressed because of failure to comply with the requirement of this section that States implement a nonpoint source pollution management program. Thus, there will be available to Congress, in a timely fashion, information on the causes and problems of nonpoint source pollution on a nationwide scale for noncomplying States, as well as complying States. Such information will be needed for future decisions on nonpoint source pollution control.

Subsection (d) authorizes Federal grants to States to assist them in implementing approved management programs and authorizes funds to be appropriated to the Environmental Protection Agency for the administration of this new section. The Federal grants are not to exceed 75 per centum of the costs of implementing the State management program. Non-Federal funds must be equal to at least 25 per centum of the costs being paid for by the Federal grant. This requirement will ensure adequate State financial involvement while providing necessary Federal financial assistance.

Two-thirds of the Federal funds for grants are to be allotted to the several States (as defined in the Clean Water Act) based on the table included in the bill. These funds can then be awarded to States with approved management programs to the extent they contribute the required 25 per centum matching funds. The table in subsection (d)(2)(A) presents a percentage allotment for the fifty States, the District of Columbia, and Puerto Rico, computed on factors of population and acreage in production. No State is allotted less than one-half of one per centum of the total two-thirds grant allotment.

The allotment table also provides that one-tenth of one per centum of the allotted funds shall be available for grants to each of the following: American Samoa, Guam, Northern Marianas, Pacific Trust Territories, and the Virgin Islands. The amount of one-tenth of one per centum was selected because of the small populations and acreages in production in each of these areas.

Subsection (d)(2)(B) authorizes the Administrator to award discretionary grants to States (as defined in the Clean Water Act) from the one-third portion of the funds appropriated for grants that he holds in reserve. This provision is intended to give the Administrator authority to provide additional financial assistance in addition to that provided under the allocation formula to States that are seeking to control particularly difficult or serious nonpoint source pollution problems, to implement innovative control methods, or to control interstate nonpoint pollution problems. These grants are to be awarded at 75 per centum of the cost with non-Federal funds paying 25 per centum of the costs.

This provision is intended to provide an additional financial incentive to States to implement the three types of program initiatives described above. These discretionary funds may be used, for example, to address particularly difficult nonpoint source pollution problems. In such cases, the environmental benefits from controlling the pollution may be large, but the State may be reluctant to devote a disproportionate amount of its program funds to one problem. Also, it may be the case that the allotment foumula imperfectly distributes Federal funds to the States with the most extensive problems. In such cases, the Administrator is expected to use the discretionary funds to achieve more effectively the objectives and requirements of this bill. Additional funding to States with particularly difficult problems will result in more expeditous implementation schedules and more rapid reduction in nonpoint source pollutant loadings.

The Administrator also is expected to support States' efforts to develop innovative nonpoint source pollution control practices. Again, the States may perceive little incentive to devote program grant resources to innovation and may properly be reluctant to stake program schedules and commitments on the success of innovative practices. In such cases, the Administrator may support the State's innovative efforts from the discretionary funds.

As discussed above, interstate nonpoint source pollution problems may be difficult because the program costs to control the pollution may accrue mostly to one State while the environmental benefits accrue mostly to another. In such cases, the Administrator may supply additional discretionary grants to the appropriate State, or may provide additional funding to a joint or cooperative interstate program.

In addition, these funds may be used to assess the relationship between nonpoint source pollution and groundwater quality.

Through these funds are discretionary, the Administrator is expected to use all available funds to support the activities for which they are intended, as described above, in response to applications from the States that meet the requirements and objectives of this bill.

Subparagraph (d)(2)(B) also authorizes the Administrator to make funds available directly to Indian tribes to implement nonpoint source pollution management programs consistent with subsection (a)(1). Such grants will be for 75 per centum of the costs of implementation with the tribes providing 25 per centum of the costs.

Subsection (d)(3) provides that any funds not obligated in the fiscal year for which they were appropriated shall be reallotted in the States according to the table in paragraph (d)(2)(A) in the following fiscal year. This applies to funds not obligated by the Administration under both subparagraphs (A) and (B) of subsection (d)(2).

Subsection (d)(4) provides that States may use Federal funds authorized by this bill for financial assistance to persons only insofar as the assistance is related to costs of implementing demonstration projects. These Federal funds are not to be used as a general subsidy or for general cost sharing to support implementation of best management practices by persons. However, a State is not precluded from using or directing other funds for cost sharing or other incentive programs if it so chooses.

The term "demonstration projects" includes projects designed to educate persons about the application of best management practices and to demonstrate their feasibility and utility as well as research projects to establish the feasibility or cost effectiveness of best management practices.

Initial program grants are required to be awarded to States whose programs meet the requirements of subsection (a)(1). Subsection (d)(5) requires the Administrator to determine, before awarding a subsequent grant to a State, that such State is satisfactorily implementing its management program consistent with its commitments to schedules and milestones. The determination under this subsection is important to assure that States are effectively implementing their programs and that Federal funds obligated under this section are being used effectively to achieve the objectives of this bill.

Subsection (d)(6) authorizes the Administrator to request such information, data, and reports as he may deem necessary to determine future eligibility for grants under this section. Under the authority of this subsection, the Administrator may request information about the management of Federal funds obligated to the States in order to assure that the funds are being used in a manner consistent with the requirements and objectives of this bill and with applicable regulations. If a State refuses to submit information, data, and reports requested by the Administrator, the Administrator should withhold a State grant authorized under this section.

Subsection (d)(7) authorizes $70 million for fiscal year 1985; $100 million for fiscal year 1986; and $130 million for fiscal year 1987. These funds are authorized to be appropriated for grants to the several States pursuant to the provisions of this subsection and for the payment of salaries and expenses of the Environmental Protection Agency necessary to administer that Agency's obligations under this new section.

Subsection (e) requires each State to submit an annual report to the Administrator on its progress in meeting the schedule submitted pursuant to subsection (a)(1)(e) of this section and, to the extent possible, reductions in nonpoint source pollutant loading and improvements in water quality resulting from implementation of the management program.

Subsection (f)(1) requires the Administrator to transmit to the Office of Management and Budget and appropriate Federal agencies a list of the assistance programs and development projects which each State has identified for review pursuant to the authority of subsection (a)(1)(G) of this bill. Beginning no later than 60 days thereafter each Federal agency is required to amend applicable regulations so that individual assistance applications and projects for the identified programs and development projects are submitted for State review. The appropriate agencies and departments of the Federal Government are required to accommodate, according to the requirements and definitions of Executive Order 12372 (as in effect on September 17, 1983), concerns the State may express about consistency of projects or activities with the State's nonpoint source pollution management program.

The intent of this provision was explained partially in the discussion of subsection (a)(1)(G) earlier in this report. Where the earlier subsection authorized the State to identify Federal programs and development projects for review, this subsection establishes the Federal responsibilities in response to such identifications by the States.

The purpose of the State review is to assure consistency of these Federal activities with the State's nonpoint source management program. If the State expresses a concern about consistency, the Federal agency is required to accommodate the State's concerns according to the requirements and definitions of Executive Order 12372 as in effect on September 17, 1983. The intent, therefore, is not to invent new procedures for Federal/State coordination, but rather to incorporate existing procedures by reference to the Clean Water Act. This is an important provision because, without adequate State review, Federal activities over which the State has no direct authority could undercut its program and its water quality goals, possibly jeopardizing the State's ability to meet its program commitments under this section.

Subsection (f)(2) requires the Administrator to establish an information clearinghouse for information pertaining to the costs and relative efficiencies of best management practices and the relationship between water quality improvement and the implementation of various practices. The purpose of this provision is to promote information sharing among the States and to provide the basis for technical assistance to State programs.

Subsection (f)(3) requires the Administrator, within three years of enactment, to submit to Congress a report, based on information submitted by the States and such other information as appropriate, describing the management programs being implemented by the States and their experiences in adhering to schedules and implementing best management practices. This report must also describe the amount and purpose of grants awarded under this program; identify the progress made in reducing pollutant loads and improving water quality; and indicate what further actions need to be taken to reduce nonpoint source pollution in the context of the program.

The purpose of this report as well as any reports made to Congress under subsection (c), is to give Congress the information it will need to determine whether the approach taken in this legislation is adequate. This report will document the progress made under this approach and will provide information that will help determine the necessity of future statutory revisions.

The bill amends existing section 304(k)(1) of the Clean Water Act to incorporate a reference to this new section 319. Existing section 304(k)(1) requires the Administrator to enter into agreements with the Secretaries of Agriculture, Interior, and Army and the heads of other appropriate departments and agencies to provide for the maximum utilization of other Federal laws and programs for the purpose of achieving and maintaining water quality through appropriate implementation of plans approved under section 208 of this Act. This amendment would establish the same requirement in terms of management programs developed pursuant to this section.

A new paragraph (5) is added to section 205(j) requiring that the Administrator reserve a portion of a State construction grant allocation to support the implementation of the State nonpoint pollution control program pursuant to section 319 of the Act.

The Administrator is directed to reserve 1% of a State allocation under section 205(c) or $100,000, whichever is greater. The State may request the use of any amount of the amount reserved by the Administrator. If the State identifies an amount less than the full reserved amount but greater than $100,000, the State may use remaining reserved funds for other purposes under title II of the Act. For example, the State would be able to use the funds for direct grants to municipalities for construction of treatment works. If the State requests use of an amount of the reserve less than $100,000, the difference between the requested amount and $100,000 shall remain available to the Administrator and shall be realloted to States able to apply funds to implementation of programs under section 319 and any amount of the reserve greater than $100,000 shall be available to the State for other purposes under this title.

Funds available under this section are to be used to make grants to States for the implementation of the management programs to control nonpoint source pollution development under section 319 of this Act. Funds may be used in conjunction with grants established under section 319(d). The Administrator may establish such administrative and procedural requirements as necessary to assure that funds available to States under this section and section 319(d) are properly coordinated. Further, the Administrator may require a single application for grants under this section and section 319(d).

Grants under section 205(j)(5) shall meet the Federal/nonFederal cost sharing requirement set forth under section 319. In management of funds under this subsection, however, the Administrator shall not withhold any portion of funds to support special programs.

These funds are intended to be a supplement to the funds authorized by section 319, not to replace them. It is essential that adequate section 319 funds be appropriated in order to assure the development of a strong foundation of nonpoint management plans. In the event section 319 funds are not appropriated, the funds reserved under this subsection will permit modest nonpoint programs to be developed. However, the funds made available by this provision alone are too meager to support the level of program development that is needed to manage nonpoint source pollution.

NATIONAL ESTUARY PROGRAM

The reported bill adds a new section 320 which authorizes the Administrator to convene management conferences to solve pollution problems in interstate and international estuaries. Under the provisions, EPA would convene a management conference if the Administrator determine that the attainment and maintenance of water quality in an estuary requires the control of interstate or international pollution.

Estuaries are sensitive and diverse ecosystems. Their varied fish and wildlife resources and their proximity to large urban areas provide numerous recreational and economic opportunities for millions of citizens. Over the last decade, environmental and other resource values of many estuaries, including Narragansett Bay, Chesapeake Bay, Puget Sound, Long Island Sound, and Hudson River/Rasitan Bay, Buzzards Bay, have experienced serious water quality degradation. Because they receive wastes from upstream areas, which are often trapped by estuarine counter currents, estuaries have been described as "sinks or septic tanks" for heavily populated areas.

The management conferences would be convened for up to five years and would develop comprehensive conservation and management plans which recommend priority actions for the control of point and nonpoint sources of pollution. These conferences shall include representatives of international, interstate, and regional agencies; state and local governments and entities; interested Federal agencies; affected industries, public and private educational institutions and the general public in the estuarine zone. It is important to note, however, that any priority corrective actions or compliance schedules recommended by the conference shall in no manner be less stringent than any requirements of Federal law. Nothing in this section shall affect compliance schedules or other requirements established by law or by the Agency for municipal, industrial or other dischargers.

The Administrator shall approve the plan if it satisfies the purposes of section 320, and the affected Governor or Governors concur. Once a plan is approved, funds authorized to be appropriated under the title II construction grants program, the title VI water pollution control revolving loan program and the section 319 nonpoint source pollution program may be used in accordance with the applicable requirements of the Act, to assist states in implementing programs. This provision does not in any way preclude the use of funds for any eligible project under title II, title VI or section 319 of the Act.

The provision authorizes $12 million annually for the management conferences. Expenses related to the administration of management conferences are not to exceed 10% of amounts appropriated. Grants are provided on a 75 percent Federal, 25 percent non-Federal basis to states, interstate or regional water pollution control agencies to conduct research, monitoring, modeling and other technical work necessary to develop conservation and management plan. Those agencies which receive grants are required to report to the Administrator 18 months after receipt of the grant and biennially thereafter.

EPA has established an Office of Marine and Estuarine Protection through which these provisions are to be implemented. The Office has initiated studies in Narragansett Bay, Buzzards Bay, Long Island Sound, and Puget Sound as authorized by Congress in the EPA's fiscal year 1985 appropriations bill. The Committee expects the Office to continue its involvement and support for these estuaries through this new provision as well as other estuaries as determined by the Administrator.

STORMWATER RUNOFF FROM OIL AND GAS OPERATIONS

This section adds a new subsection (1) to section 402 of the Clean Water Act, specifically exempting certain stormwater runoff discharges from permit requirements and effluent limitations. Discharges from oil or gas exploration, production, processing, or treatment operations are covered by this provision. This refers generally to field operations, and not to refinery operations which are unlikely to meet the requirement that runoff be uncontaminated. To be exempted, such discharges must be composed entirely of flows of precipitation, runoff from conveyances or systems of conveyances used for collecting and conveying such water. Such flows cannot be contaminated with process wastes, toxic pollutants, hazardous substances, or oil and grease. The Administrator shall determine what constitutes contaminated runoff for the purposes of this subsection. Examples of contamination include heavy metals or suspended or dissolved solids from process wastes or disturbed soils, or salts, surfactants, or solvents used or produced in the oil and gas operations. Background levels of toxic pollutants which are naturally occurring (this is, do not result from disturbed soil or other human activity) would not be considered contamination. Runoff exempted under this subsection from effluent limitations may still be subject to stormwater management practice requirements or other nonpoint source controls.

Reference to mining operations was removed from this section of the subcommittee bill during full Committee markup because EPA is currently developing stormwater runoff regulations to address the situation.

Reference to mining operations was removed from the Subcommittee bill during full Committee markup because EPA is currently developing stormwater runoff regulations to address the situation.

ANTI-BACKSLIDING

The bill adds new subsections to section 303 and 402 which clarify the Clean Water Act's prohibition of backsliding on effluent limitations. This prohibition is inherent in the Act's policy of requiring reasonable further progress toward the national goal of the elimination of the discharge of pollutants into waters of the United States. The intent of the policy is to preserve pollution control levels achieved by dischargers by prohibiting the adoption of less stringent treatment or control limitations, standards or conditions than those already contained in a permit except in certain narrow circumstances.

The amendment to section 402 makes explicit that where a permit limitation is based on section 402(a)(1)(B), that limitation may not be made less stringent because there has been a subsequently promulgated effluent guideline that would have resulted in less stringent effluent limitations had it been used as a basis for the permit. This prohibition recognizes that since these "Best Professional Judgment", or (BPJ), permits are issued on a case-by-case basis, they can more accurately consider and reflect the circumstances of an individual facility than is possible in a generic national guideline.

The proposed amendment states that BPJ permits may not be made less stringent "solely" on the basis of a subsequent guideline. This provision is intended to exclude any consideration of a subsequent guideline as a basis for reducing permit limitations. The use of the term "solely" will not allow permittees to use the subsequent guideline as a reason for obtaining less stringent limitations. However, adoption of different limitations could possibly occur based on other very limited, legally permissible circumstances specified in the permit modification regulations.

Where the permittee can demonstrate that installation and adequate operation of treatment facilities has failed to achieve the permitted effluent limitation, limits in the new permit may reflect the level of control actually achieved, but shall not be less stringent than required by the effluent guidelines in effect at the time of permit issuance or renewal.

The amendment to section 402 also addresses the antibacksliding issue in the context of permits developed on the basis of water quality based effluent limitations under section 301(b)(1)(c) or section 303(d) or (e). These permits may be renewed, reissued or modified on the basis of subsequently revised waste load allocation formulas (WLAs) but only if those WLAs are in compliance with a new section 303(d)(5).

Under paragraph (5)(A) of the new subsection, where the applicable water quality standard has not been attained, the total maximum daily load of pollutants or other WLA may be revised only under two circumstances. First, the cumulative effect of the revised effluent limitations based on the total maximum daily loads or

WLA must assure attainment of water quality standards. Backsliding is prohibited for any particular point source except where the effluent limitations in the permits of other point sources discharging into the same receiving waters are contemporaneously revised to be more stringent, so that the cumulative effect of all of the contemporaneous revisions would achieve attainment of water quality standards in the receiving waters. Also, in considering the "cumulative effect" of these permit revisions, EPA or an approved NPDES State agency must consider the impacts on water quality standards and designated uses in waters downstream of the receiving waters. Backsliding cannot be allowed if the cumulative effect of the revised permit effluent limitations interferes with the attainment or maintenance of water quality standards or the protection of designated uses of downstream waters.

Second, the daily maximum load of pollutants or the WLA may only be revised if the designated use of the receiving waters which is not being attained is changed in accordance with the water quality standards regulations established under section 303.

Under paragraph (5)(B) of the new subsection, where water quality in the receiving waters exceeds or equals water quality standards or the levels needed to protect the actual or designated uses of the receiving waters, backsliding from water quality-based effluent limitations is prohibited except to the extent EPA or an approved NPDES state agency proceeds according to the procedures and applying the decision standard of the antidegradation policy established by section 303 of the Act and implemented by 40 C.F.R. sec. 131.12 (1984), and the proposed backsliding is found to be consistent with this antidegradation policy. Therefore, where such water quality exists, even because of the withdrawal of any existing discharge from stream, increases in pollutants from other sources above permit limits can be allowed only where the intergovernmental coordination and public participation provisions of the State's continuing planning process are followed, and the State finds that lower water quality is necessary to accommodate important economic or social development in the area.

SEWAGE SLUDGE

Section 405 of the Clean Water Act is amended to establish a timetable for promulgation of toxic contaminant criteria for sewage sludge use and disposal, to establish a public health and environmental protection basis for these criteria, and to provide authority to implement and enforce criteria for toxic and other pollutants.

A new section 405(d)(2) requires the Administrator to identify by April 1, 1986, toxic pollutants which may be present in sewage sludge in concentrations which may affect public health or the environment. These toxic pollutants are those about which the Administrator currently has available information on the toxicity, persistence, concentration, mobility or potential for exposure on which to base use and disposal criteria. The criteria are to be promulgated by March 1, 1987. Toxic sludge contaminants not included on this list are to be identified by February 1, 1987, and criteria promulgated by December 15, 1987.

This phased approach reflects the fact that the Agency already has sufficient information to establish criteria for some contaminants and some sludge uses, while information may be lacking for other contaminants or uses. The amendment requires the Agency to proceed with regulation where it has the basis to do so. A longer time frame is provided for pollutants where information is not now available. The deadlines represent a substantial extension of the original 1978 deadline in section 405(d) and are based on the Agency's present timetable for establishing the required criteria.

In some cases, the Administrator may not find it feasible to establish numerical criteria for certain contaminants and disposal methods. In such cases, the Administrator may establish a design, equipment, management practice or operational standard in lieu of numerical criteria. This alternative approach must be adequate to protect public health and the environment from any reasonably anticipated adverse effects. This provision is intended to give the Administrator a measure of flexibility, but he is expected to justify any deviation from the presumptive requirement for numerical limits.

New section 405(d)(2)(C) requires compliance with these criteria within twelve months of their promulgation. If new pollution control technology must be constructed, the compliance deadline is extended to two years. In recognition of the fact that some compliance deadlines for toxic contaminants in the second phase of regulation may extend to late 1989, new section 405(d)(2)(E) requires the Administrator to impose permit conditions or to take other steps he deems necessary to protect against adverse effects from contaminated sludge prior to the promulgation of the required regulations.

Section 405(e) is amended to expand the applicability of the 405(d) sludge use and disposal regulations to "any person" and to broaden the scope of the section beyond publicly owned treatment works to include any treatment works treating primarily domestic sewage. The purpose of the first change is to impose the regulations on those that actually dispose of the sludge, which may not be the treatment works' owner or operator. The second change is intended to better reflect Congress' intent that section 405(d) requirements apply to septage treatment and disposal systems and privately and Federally owned treatment works which treat primarily domestic wastes. It is not intended to extend section 405 requirements to treatment works owned by industries which receive a portion of their flow from industrial manufacturing and processing.

The current language of section 405 does not specifically define compliance mechanisms. A new subsection (f) is designed to provide for this by allowing the 405(d) guidelines to be imposed through the NPDES permit program under section 402 of the Clean Water Act, a comparable Federal permit program, or an approved State permit program. To be approved, a State's permit program must have substantive standards at least as stringent as those contained in the 405(d) guidelines. These alternative programs may be used when the Administrator determines that they will assure compliance with applicable requirements of section 405. New subsection (f)(2) authorizes EPA to issue a separate permit solely to impose section 405(d) requirements if the treatment works, such as a land treatment system, does not require a discharge permit under one of the authorities listed in subsection (f)(1) and is not covered by an appropriate State permit.

Section 405(d) guidelines that are incorporated into a Federal or State permit would be enforceable in the same manner as other permit provisions under the applicable statutory permit-issuance authority. For example, noncompliance with a sludge disposal requirement contained in a hazardous waste disposal permit issued under Subtitle C of the Resource Conservation and Recovery Act would be subject to enforcement under section 3008 of RCRA. Similarly, a sludge disposal requirement in an ocean dumping permit issued under the Marine Protection, Research and Sanctuaries Act would be subject to enforcement under section 107 of MPRSA. Notwithstanding the issuance of a permit that implements a section 405(d) guidelines, the guideline itself would remain directly enforceable under sections 309 and 405(e) of the Act.

INTERSTATE DISPUTE RESOLUTION

The bill as reported amends section 402 of the Clean Water Act to require the Administrator to finally decide disputes between States as to whether a discharge for which one State proposes to issue a permit will cause or contribute to a substantial violation of water quality requirements or adversely affect public health in another State. Under current law, a State whose waters may be affected by the issuance of a permit in another State may submit recommendations to the permitting State. If those recommendations are not accepted by the permitting State, the Administrator may object to the issuance of the permit.

New Section 402(d)(2)(B) requires the Administrator to decide the merits of such a dispute. Where the permitting State fails to accept the recommendations of the downstream State, the Administrator shall determine whether any substantial violation of a water quality requirement (including any standard) or adverse effect on public health of the downstream State would result from the issuance of the permit. If so, the Adminstrator must object to the issuance of the permit or provide specific modifications to the permit. Any determination by the Administrator under this provision would constitute the issuance or denial of a permit and would be subject to judicial review under section 509(b). Thus a State dissatisfied with the Administrator's decision could seek review in the U.S. Court of Appeals for the appropriate circuit.

In addition to the procedure under section 402(d)(2)(B) for resolving disputes over proposed permits, under new section 402(b)(1)(E) a permit which is in effect shall be reconsidered for termination or modification when a downstream State provides notice that the permitted discharge is causing a substantial violation of a water quality requirement (including any standard) or adversely affecting the public health of such State and seeks a modification of the permit. Then, in the permit proceeding to terminate, or modify, or reissue the permit, the affected State may make recommendations under section 402(b)(5) and if they are not accepted, section 402(d)(2)(B) governs.

A new section 511(e) is added by the reported bill, providing a new method of resolving disputes between States over the effects of activities in one State on the water quality of another State. The provision is intended to address sources of pollutants not covered by permits, and therefore not subject to the interstate dispute resolution mechanism of section 402(d)(2)(B). Under section 511(e) a State or municipality which alleges that its water quality is being adversely affected by pollutants from another State may petition the Administrator. The Administrator must then determine on the record, after a hearing under the Administrative Procedures Act, whether such pollution is causing a substantial violation of a water quality requirement (including any standard) of the downstream State or adversely affecting the public health of such State.

If the Administrator so determines, the Administrator must issue an order within 90 days restraining any permit causing or contributing to such pollution or providing such other relief as is appropriate, taking into account the goals and requirements of the Clean Water Act and other equitable considerations. Such an order is judicially reviewable. This broad authority is comparable to that under section 303 of the Clean Air Act or section 7003 of the Solid Waste Disposal Act, although those are limited to situations involving imminent and substantial endangerment. The Administrator, in fashioning remedies under this authority, should exercise prudence to assure that the relief granted is comparable in scope and magnitude to the violation and the injury. In addition to the adjudicatory hearing called for in section 511(e), the Administrator may wish to convene a more informal management conference involving the affected States and municipalities to frame the issues and facilitate a resolution. Such conferences could be similar to the enforcement conferences under the Federal Water Pollution Control Act prior to the 1972 amendments. The determination and any administrative order issued under section 511(e), however, would be the responsibility of the Administrator.

In no case shall orders or other relief based solely on new section 511(e) supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws. This new subsection does not apply in any case in which section 402(d)(2)(B) or section 402(b)(1)(F) is available, nor to any pollution which is subject to the Colorado River Salinity Control Act of 1974, nor to any water pollution which results from emissions from mobile or stationary sources which are regulated under the Clean Air Act.

These dispute resolution mechanisms are used only where the violation of the water quality requirement is found by the Administrator to be substantial. In determining whether a water quality requirement violation is "substantial," the Administrator may consider factors such as, but not limited to, the following: the volume of the discharge, the frequency and duration of the violation, as well as consequences of the violation (in some cases, for example, a violation which is not "substantial" in volume, could be "substantial" in terms of consequences). This assures that these provisions are not used by downstream States in an attempt to alter the water quality standards of upstream States in the absence of a significant pollution problem emanating from upstream States.

Economic or other competition between States is an inappropriate motive and impermissible grounds for the use of either section 402(d)(2)(B) or section 511(e). In weighing the equities under either section, the Administrator should not allow the imposition of controls in the upstream State, at the instance of a downstream State, which the downstream State is not willing to impose on similar sources within its boundaries affecting the same water body.

PRESERVATION OF OTHER RIGHTS

The reported bill amends section 505 of the Clean Water Act, the citizen suit provisions, to clarify that nothing in the Act displaces, preempts, or limits the ability of any person injured by noncompliance with any Clean Water Act requirement or permit to seek damages under other Federal statutes. In addition, new subsection (e)(3) provides that States or municipalities may bring actions involving State law, in cases involving water pollution arising in another State, in Federal district court, in either the State bringing the action or the State in which the cause of action arose. This will provide access to a neutral forum, the Federal courts, for resolution of interstate disputes, for States and municipalities which are not now covered by 28 U.S.C. 1332, the statute granting jurisdiction of Federal courts based on diversity of citizenship of the parties.

The purpose of this section is to preserve legal rights which exist by virtue of State statute or common law or other Federal statutes. This amendment does not create new rights or expand those which previously existed. New subsection (e)(3) places a State or municipality in the same position as one of its citizens for the purpose of gaining access to Federal court under the diversity of citizenship jurisdiction. It is not intended to create any new substantive rights or affect the application of choice of law rules by the Federal courts.

HAMPTON, N.H. AD VALOREM TAX AMENDMENT

This section permits the Town of Hampton, New Hampshire, to continue using its ad valorem tax user charge system for collecting the costs of operation and maintenance of its sewage treatment works. Previously, Hampton had been unable to submit its ad valorem tax system to the Environmental Protection Agency for review and approval because of a disagreement over whether the tax system was dedicated to this purpose as of December 27, 1977. The Committee finds that Hampton's ad valorem tax system was in place and in operation as of this date, and therefore is deemed to have been dedicated as of this date. The Committee also finds that Hampton developed a user fee tax system only under duress, and such system was never implemented. It is the Committee's understanding that Hampton's ad valorem tax meets all the remaining requirements of section 204(b)(1) and other related regulations, and the Agency is to review the system for compliance.

LIMITATION ON DISCHARGE OF RAW SEWAGE BY NEW YORK CITY

The reported bill contain provisions which limit the volume of raw sewage discharged by the city of New York. The limitations apply to the drainage areas of two sewage treatment plants currently under construction, North River in Manhattan and Red Hook in Brooklyn.

Raw discharges from the North River drainage area will be limited after August 1, 1986, if the North River plant has not achieved advanced preliminary treatment by that deadline, as required by a consent decree signed on December 29, 1982 by the United States, the State of New York, and the City of New York. The raw discharge in any 30 day period may not exceed 30 times the average daily raw discharge during a specific one year base period. The base period is the year ending on March 15, 1986, or on the date the plant becomes operational, whichever is earlier.

Raw discharges from the Red Hook drainage area will be similarly limited, except that the deadline and the base period are one year later than for the North River drainage area.

The Administrator shall waive these limitations if an increased discharge constituting a violation is caused by certain events, but only to such extent and for such limited period of time as the Administrator determines to be necessary to take into account the event. These events include an interruption in plant operation due to circumstances beyond the control of New York City, and precipitation. In addition, a waiver shall be granted in the event that a violation is due to a random or seasonal variation in flow, and that any sewer hookup occurring or permit granted after July 31, 1986, for North River and July 31, 1987, for Red Hook is not responsible for such violation.

The Administrator is also required to extend either deadline if necessary to account for circumstances beyond the control of New York City. A deadline may not be extended on the basis of a lack of Federal funding under section 201 of the Federal Water Pollution Control Act, a lack of New York State or New York City funding, or a policy decision by New York State or New York City to delay the achievement of advanced preliminary treatment.

For enforcement purposes, violations of the discharge limitations are to be treated as violations of section 301 of the Federal water Pollution Control Act. If the Administrator makes a determination that a violation has occurred and that there is no basis for a waiver or deadline extension, the Administrator must start an enforcement action under section 301 within another 30 days.

This section states that it is the sense of the Congress that the Administrator should not agreee to any further modification of the consent decree with respect to the schedule for achieving advanced preliminary treatment.

Under a "sunset" provision, any limitations remain in effect in a drainage area until the treatment plant for that area has achieved advanced preliminary treatment for six consecutive months.

The Administrator is responsible for performing all flow monitoring needed to determine the discharge limitations. The Administator must, by July 31, 1986, for North River and July 31, 1987, for Red Hook, establish the methodologies and collect any information necessary for making determinations whether a waiver or deadline extension will be required. If the Administrator detects a violation, the Administrator must determine within 30 days whether a waiver or deadline extension is required. New York City is responsible for providing any additional information requested by the Administrator in order to make this determination.

CHESAPEAKE BAY

The Administrator is required to establish an Office of Chesapeake Bay Programs in support of a continuing State/Federal Chesapeake Bay program, at an authorization level of $3 million for the purposes of a) collecting, coordinating, and disseminating all research information concerning the environmental quality of the Bay, b) conducting research to identify the sources, quantity, and effects of sediment deposition on the Bay, c) conducting research on the impacts of pollutant loadings on the Bay's water quality and biota.

The Administrator is authorized to make grants to those States affected by the Chesapeake Bay interstate management plan, at the request of the Governors, which commit to implement all or substantially all aspects of the plan within one year from enactment. States are required to submit a description of selected abatement actions and estimated costs for the Administrator's approval. The Federal share, with an authorization level of $10 million per year, will not exceed 55 percent of annual implementation costs. Administrative costs are limited to 10 percent of the annual Federal grant made to the State. States receiving grants must submit a progress report 18 months after receipt and biennally thereafter.

Management of the Chesapeake Bay Program has been assisted by a State/Federal committee, including water quality officials from the major States in the Chesapeake Bay Basin. Implementation of the results of this Chesapeake Bay Study will require a partnership between the Federal Government and the individual States. Because of the involvement of water quality managers in guiding the policy and program decisions of the Chesapeake Bay Program, the recommendations are likely to be more realistic and the managers are likely to be more committed to implementation of the results.

The findings of the Chesapeake Bay Program underscore the fact that the Chesapeake Bay is an ecosystem which ignores State boundaries. In addition to individual State commitments to implementation of the Chesapeake Bay Program recommendations. The States and the Federal Government must make the commitment collectively to continue interstate communication, cooperation, and coordination on the Chesapeake Bay.

In an unusual, and perhaps unprecedented way, the U.S. Environmental Protection Agency relied on the State/Federal Management Committee to set program directions and make policy decisions. The Chesapeake Bay Program Management Committee is an excellent model for Federal/State cooperation in environmental research/management studies.

The Chesapeake Bay Program was initially structured as a research program with little or no emphasis on management implications. Preliminary results of the research showed that the orientation of the research scientists had been to describe the current conditions of the Bay in objective, quantitative terms rather than to point out problems, explore causes, and suggest solutions. The

Chesapeake Bay Program Management Committee members, particularly the State water quality managers, insisted that the scientific researchers had a responsibility to tell them what needed to be done to reverse the declining resource trends which they had identified in the Bay.

Several products of the Chesapeake Bay Program resulted from this pressure by the Management Committee which were not initially conceived when the Chesapeake Bay Program began.

1. The synthesis of the findings of 45 individual scientific research reports into a single report which "pushes" the science to suggest management implications.
2. A comprehensive report characterizing the overall environmental health of the Bay through a statistical analysis of trends and the current condition of many water quality and fisheries productivity parameters.
3. A final Management Report recommending actions to maintain and improve the health of the Bay.

The success of the Chesapeake Bay Program so far, in maintaining the support of Congress and the States, can be, in large part, attributed to the Management Committee. The future likelihood that the Chesapeake Bay Program recommendations will be implemented is probably due almost exclusively to the Management Committee. By their intensive participation during the Chesapeake Bay study, the State and Federal managers have shaped a product that reflects their needs, and is something they can readily take action on.

GREAT LAKES

A new section 118 establishes by law the Great Lakes National Program Office within the EPA. Such an office has already been established administratively and is located in Chicago. This section more clearly defines its duties, enhances its accountability to Congress, and authorizes funding.

In 1982 the General Accounting Office published a report on U.S. compliance with the Great Lakes Water Quality Agreement of 1978, an agreement with Canada that specifies detailed water pollution control goals. The report concludes that the U.S. is failing to meet its commitments, especially with respect to toxic chemicals and nonpoint source pollution. This is due in part to the absence of a comprehensive approach to Great Lakes Water Quality.

The Program Office is given three basic duties: developing and implementing plans to carry out U.S. responsibilities under the Great Lakes Water Quality Agreement of 1978, establishing a water quality surveillance network, and serving as the liaison to the Canadian members of the International Joint Commission and the Canadian counterpart to the EPA. In addition, the office is required to develop programs for control of nutrients, including phosphate, and toxic chemicals. The nutrient program will incorporate any actions taken in the Great Lakes basin under the nonpoint source pollution program established in section 319 of the Clean Water Act and will include nutrient monitoring. The toxic chemicals program will emphasize the removal of pollutants from bottom sediments.

The EPA's annual budget submission to Congress is to include a funding request for the Program Office as a separate line item.

This section requires the Administrator to submit an annual Great Lakes report to Congress. The report will describe recent progress toward implementing the Great Lakes Water Quality Agreement of 1978 and the system of water quality surveillance, prospects for improving water quality, and planned efforts to implement the agreement.

To enhance cooperation among agencies, the head of each Federal agency involved in programs related to the Great Lakes is required to submit an annual report to the Administrator. The reports will describe the agencies' activities affecting compliance with the agreement.

This section authorizes $10,000,000 per year for fiscal years 1986 through 1990 for the Great Lakes National Program Office to carry out its duties under the section.

CLEAN LAKES

Section 314 of the Act is amended to provide for effective reporting of lake quality by State agencies on a regular basis. Reports are to identify lakes in each State, identify lakes with impaired uses, and include a description of the State program for lake protection.

The Committee reaffirms its belief that lakes are a vital national resource. Fifty percent of the nation's water supply comes from lakes and lakes offer outstanding recreational opportunities. There is evidence, however, of declines in lake quality. A recent survey by the North American Lakes Management Society found that 4,200 lakes in 38 States suffer impaired uses.

Despite this evidence there is currently no comprehensive and complete picture of the quality of lakes nationally. In addition, there is no clear description of trends in lake quality. Section 314 of the Act originally provided for single lake report from States. These reports were completed and submitted a number of years ago and the material in the reports is dated. The amendment to section 314 will provide for regular and complete reporting on lake quality and will be a basis for future assessment of the condition of lakes and the need for protection programs.

To avoid unnecessary reporting burden, the lake quality reports will be included in the State water quality report prepared every two years under section 305(b) of the Act. Also, a State must prepare and submit a lake quality report to EPA in order to receive a grant under section 314 of the Act.

Finally, section 314 is amended to include saline lakes under the Clean Lakes Program.

LAKE PEND OREILLE STUDY C

A comprehensive water quality investigation of the Clarks Fork/Lake Pend Oreille system in Idaho and Montana is needed to identify sources of pollution and the remedial measures necessary to protect and enhance the water quality of this important resource. The Clarks Fork/Pend Oreille system is a primary feature of the environment of northern Idaho, western Montana and eastern Washington. The river drains an area of more than 22,000 square miles. The lake, with a surface area of 125 square miles is Idaho's largest. The principal inflow from the lake is the Clarks Fork River.

Perceived deterioration of water quality in the lake and known pollution sources in the Clarks Fork drainage (including three "Superfund" sites) led to the initiation, in 1984, of water quality studies by both the states of Idaho and Montana. These studies are still in progress but it is clear that the states do not have the resources to do the total job. An adequate study must include (1) a thorough evaluation of the source and rate of nutrients, sediments and toxic materials entering the Clarks Fork River and their downstream movement and (3) the development of a comprehensive, coordinated water quality management plan to assure protection in the future.

The studies authorized in this section should supplement the ongoing State efforts and help assure protection of this immensely valuable regional resource.

TITLE II

CONSTRUCTION GRANT AUTHORIZATION C

The bill amends section 207 of the Clean Water Act to authorize $2.4 billion annually for the Title II construction grants program for fiscal years 1986 through 1988, and not to exceed $1.2 billion annually for fiscal years 1989 and 1990. It is the intent of the Committee that funding for the Title II construction grants program be concluded as of 1990. Therefore, even though other section of this bill authorize Federal funds for capitalizing State Revolving Funds through 1994, no further Title II construction grants program authorizations are provided after fiscal year 1990.

The bill provides States and municipalities with the clear intent that the transition to State/local funding initiated in the 1981 amendments will be completed during the period of this authorization. By signaling the end of the Title II construction grants program, States and municipalities will be able to plan effectively for assumption of increased funding responsibilities. In conjunction with provisions for State Revolving Funds, the bill encourages States and municipalities to take all actions needed to assure the adequate and timely planning, design, financing, construction, operation, maintenance, expansion, and replacement of needed wastewater treatment facilities.

The bill amends section 205(e) of the Clean Water Act by extending authorization dates through 1994.

ALLOCATION

The reported bill amends section 205(c) of the Act to establish an allotment formula for distributing construction grant funds and State revolving fund capitalization grants among States for the fiscal years 1986 through 1990. The formula in existing law expires with the fiscal year 1985 authorization. The allotment formula in the reported bill states as a 6-place decimal fraction the share of the total appropriation each State will receive in each of the fiscal years for which it is applicable. The following table contains the allotment share for each State, plus the amount in dollars each State will receive if the authorized level of $2.4 billion per year is appropriated.

TABLE I

States	Proposed formula hamless	Dollar amount
Alabama	0012500	$29,550,000
Alaska	007563	17,879,296
Arizona	012500	29,550,000
Arkansas	011714	27,692,190
California	058321	137,870,371
Colorado	010503	24,828,134
Connecticut	012500	29,550,000
Delaware	005801	13,713,142
District of Columbia	009172	21,681,649
Florida	045181	106,807,659
Georgia	014570	34,443,226
Hawaii	007440	17,587,017
Idaho	007272	17,190,998
Illinois	036881	87,186,211
Indiana	019653	46,459,219
Iowa	012672	29,955,509
Kansas	012337	29,163,619
Kentucky	015044	35,565,155
Louisiana	014380	33,994,455
Maine	009772	23,101,098
Maryland	019722	46,623,754
Massachusetts	036[illegible]95	85,565,800
Michigan	035[illegible]63	82,889,405
Minnesota	014988	35,431,632
Mississippi	012500	29,550,000
Missouri	025422	60,098,007
Montana	005411	12,790,689
Nebraska	007467	17,652,861
Nevada	006805	16,087,922
New Hampshire	012500	29,550,000
New Jersey	048867	115,521,309
New Mexico	006814	16,109,087
New York	090478	213,889,046
North Carolina	016168	38,220,388
North Dakota	004658	11,011,090
Ohio	045906	108,522,730
Oklahoma	012223	28,895,553
Oregon	011794	27,881,960
Pennsylvania	032302	76,360,982
Rhode Island	007428	17,560,296
South Carolina	013399	31,675,801
South Dakota	005400	15,129,880
Tennessee	016674	39,417,112
Texas	053882	127,376,361
Utah	012486	29,515,795
Vermont	006581	15,558,049
Virginia	016689	39,452,323
Washington	028665	67,764,523
West Virginia	012712	30,051,168
Wisconsin	022322	52,768,070
Wyoming	005359	12,669,674
Samoa	000732	1,730,448
Guam	000567	1,340,720
Mariana Islands	000533	1,259,464
Puerto Rico	012640	29,880,714
Trust Territory	001409	3,331,485
Virgin Islands	000464	1,096,952

The allotment formula in the reported bill is based on each State's needs for sewage treatment facilities, as expressed in the 1984 Needs Survey. This survey, conducted by the Environmental Protection Agency with the cooperation of the States, is the most current, complete, and accurate determination available of the needs for publicly owned treatment works which can be assisted under titles II and VI of the Act.

The formula is based on each State's aggregate needs for facilities providing secondary treatment (Category I of the Needs Survey), advanced waste treatment required by water quality standards (Category II), and correction of infiltration or inflow problems (Category IIIA), and for interceptor sewers (Category (IVB)). These are the only categories of treatment works fully eligible for funding under title II. In restricting eligibility to these categories of facilities in the 1981 amendments to the Clean Water Act, the Congress made a judgment that on a national basis these are the facilities most related to attainment of the water quality goals of the construction grant program. Also, these are the core treatment facilities which must be completed in the next few years to meet the Municipal Compliance Strategy and the 1988 secondary treatment deadline for municipalities.

Table 2 illustrates the State-by-State distribution of needs in these four eligible categories, according to the 1984 Needs Survey. In order to reach the allotment formula contained in the reported bill, several additional steps were performed on the raw needs shares reflected in this table. First, those States with very small remaining needs were identified. These are the States which need somewhat more than an allotment strictly on their share of needs, in order to have a manageable program of sufficient size to make meaningful investments in sewage treatment facilities. Also, especially for those among these States whose share would be dropping substantially because of changes in needs and allotment formulas, a larger share is needed to assure program momentum and avoid disruption.

In allotment formulas adopted by the Congress in the past, these purposes have been served by a flat minimum allotment per State of one-half of one percent. This is somewhat arbitrary, and diverts a larger share of the total to these smaller States than would result from their raw needs. Because the number of such States is growing, as the construction grant program nears its objectives, a mechanism was sought for assuring adequate program size for smaller States. This approach is more reflective of needs and less arbitrary than the minimum allocation approach.

The allotment formula in the reported bill accords this treatment to two groups of States with small shares of eligible needs. The 13 States whose individual needs are less than one-half of one percent of the total receive an aggregate allotment of 8.5 percent. This compares to the 6.5 percent these States would receive in the aggregate if the historic minimum allotment approach were followed, although the actual needs for these States constitute only 3.7 percent of the total. The eight States whose individual needs are less than one percent of the total but greater than one half of one percent, receive an aggregate allotment of 9 percent. The actual needs of these States constitute 6 percent of the total.

The actual needs of the States in the group with the lowest needs vary by 850 percent. Actual needs of the highest State in the second group are nearly twice those of the lowest State. A method was sought to reduce the variation among States in these groups, in the allotment of the increased share assigned to the groups, without resorting to an arbitrary minimum share. A standard statistical approach to reducing such variation is to consider the relationship of the logarithms of the numbers, rather than the relationship of the numbers themselves. Therefore, the allotment of funds among States with an actual individual share of total eligible needs of less than one-half of one percent is based on the logarithm of those actual needs as a fraction of the sum of the logarithms of actual needs for all the States in that group. This is illustrated in Table 3.

Because the States with an actual individual share of total eligible needs of one-half of one percent to one percent exhibit less variation, and have program levels closer to those of States with larger needs, a method was employed to reduce that variation, but to a lesser degree than the use of logarithms. The allotment among States in this group is based on the cube of the logarithm of the actual needs of a State as a fraction of the sum of the cubes of the logarithms of actual needs for all the States in that group. This is illustrated in Table 4. The cube of the logarithm was selected because it reduced the variation from that among actual needs, but not as much as the simple use of logarithms would have produced.

The remaining States, with individual actual needs in excess of one percent of total eligible needs, are allotted 82.5 percent of appropriated funds. So that no State in this group receives an allotment less than that of a State with smaller actual needs, as a result of the overconcentration of funds in the groups of States with smaller needs, the allotment formula in the reported bill provides a minimum 1.25 percent for five States (Alabama, Arizona, Connecticut, Mississippi, and New Hampshire).

Because of changed eligibilities and greatly decreasd needs since the 1980 and 1976 Needs Surveys on which the previous allotment formula was based, a number of States would suffer dramatic losses compared to that formula if an allotment based solely on eligible needs were adopted. To minimize the program disruption which would result from such reductions, the allotment formula in the reported bill contains a "hold harmless" provision, guaranteeing each State 80 percent of the allotment it had under the previous allotment formula. Eleven States benefit from this "80 percent hold harmless" provision: California, Illinois, Indiana, Maryland, Michigan, Minnessota, New York, Ohio, Pennsylvania, Virginia, and West Virginia. The money to bring these States up to the hold harmless level, of course, is derived by reducing the shares of other States with individual needs in excess of one percent of total eligible needs.

The 1981 amendments directed the preparation of a needs survey in which the allotment of sewage treatment construction funds could be related to water quality improvements, rather than merely to the estimated dollar costs of proposed treatment facilities. The 1981 Needs Survey does contain a water quality assessment, but information was not available in sufficient detail on which to base State-by-State allotment. Available information is uneven, and most useful aggregated at the national or hydrologic regional level. Future needs surveys will refine information on the water quality improvements associated with different facility investments. In the meantime, currently available information must continue to rely on the costs of facilities needed to meet the secondary treatment requirement and more advanced treatment levels needed to meet water quality standards as a surrogate for water quality impact.

One matter of concern to the Committee is the effect of future investments in wastewater treatment facilities on water quality of the Great Lakes, a valued national resource. In addition, the United States has obligations to protect and enhance water quality in the Great Lakes under the 1978 Canada-United States Great Lakes Water Quality Agreement. That Agreement commits the United States to provide financial assistance to construct publicly owned waste treatment works in the Great Lakes Region.

According to the 1984 Needs Survey, year 2000 total needs for the Great Lakes hydrologic region are $7.850 billion. This represents 9.16 percent of the year 2000 total needs for the United States (although the population served by these facilities is 8.1 percent of the U.S. total population served by needed facilities). Under the allotment formula in the reported bill, the seven States bordering the Great Lakes receive over 26 percent of annual appropriations, although the selection of specific projects within each State is a matter of State priority. According to EPA, since 1972, $15.3 billion in Federal construction grants have been obligated in the Great Lakes States, of which $5.6 billion has been in subbasins tributary to the Great Lakes. Since 1978, an estimated $3.5 billion in grants has been awarded in subbasins tributary to the Great Lakes. Historically one-half to two-thirds of that was for categories of facilities currently fully eligible.

There is great variation among the Great Lakes States in the proportion of State needs which are in basins tributary to the lakes themselves, and in the absolute size of those needs. Subbasins tributary to the Great Lakes in Minnesota report $5 million in year 2000 total needs, while those in New York may exceed $2.5 billion.

Table 2

Future Year 2000 Publicly Owned Wastewater Treatment Needs
Categories, I, II, IIIA, IVB in dollars

	Cat. I	Cat. II	Cat. IIIA	Cat. IVB	Totals, Cat. I.II.IIIA.IVB	Percent of Total
ALABAMA	282,000,000	84,000,000	89,000,000	245,000,000	700,000,000	0.013162
ALASKA	140,000,000	0	5,000,000	119,000,000	264,000,000	0.004964
ARIZONA	375,000,000	69,000,000	10,000,000	138,000,000	592,000,000	0.011131
ARKANSAS	261,000,000	48,000,000	30,000,000	92,000,000	431,000,000	0.008104
CALIFORNIA	2,318,000,000	117,000,000	339,000,000	849,000,000	3,623,000,000	0.068122
COLORADO	222,000,000	20,000,000	5,000,000	100,000,000	347,000,000	0.006525
CONNECTICUT	432,000,000	76,000,000	17,000,000	185,000,000	710,000,000	0.013350
DELAWARE	26,000,000	2,000,000	5,000,000	39,000,000	72,000,000	0.001354
DIST OF COL	97,000,000	171,000,000	0	0	268,000,000	0.005039
FLORIDA	1,352,000,000	290,000,000	117,000,000	1,097,000,000	2,856,000,000	0.053700
GEORGIA	352,000,000	191,000,000	67,000,000	311,000,000	921,000,000	0.017317
HAWAII	148,000,000	0	0	93,000,000	241,000,000	0.004531
IDAHO	137,000,000	11,000,000	6,000,000	59,000,000	213,000,000	0.004005
ILLINOIS	707,000,000	380,000,000	166,000,000	201,000,000	1,454,000,000	0.027339
INDIANA	353,000,000	130,000,000	21,000,000	134,000,000	638,000,000	0.011996
IOWA	431,000,000	92,000,000	63,000,000	215,000,000	801,000,000	0.015061
KANSAS	173,000,000	1,000,000	20,000,000	285,000,000	479,000,000	0.009006
KENTUCKY	316,000,000	105,000,000	80,000,000	450,000,000	951,000,000	0.017881
LOUISIANA	466,000,000	25,000,000	85,000,000	333,000,000	909,000,000	0.017092
MAINE	166,000,000	2,000,000	22,000,000	112,000,000	302,000,000	0.005678
MARYLAND	272,000,000	595,000,000	57,000,000	186,000,000	1,110,000,000	0.020871
MASSACHUSETTS	1,404,000,000	116,000,000	35,000,000	733,000,000	2,288,000,000	0.043020
MICHIGAN	1,250,000,000	267,000,000	39,000,000	649,000,000	2,205,000,000	0.041460
MINNESOTA	474,000,000	132,000,000	19,000,000	252,000,000	877,000,000	0.016490
MISSISSIPPI	268,000,000	84,000,000	59,000,000	161,000,000	572,000,000	0.010755
MISSOURI	1,049,000,000	4,000,000	49,000,000	505,000,000	1,607,000,000	0.030216
MONTANA	20,000,000	2,000,000	1,000,000	31,000,000	54,000,000	0.001015
NEBRASKA	177,000,000	0	1,000,000	68,000,000	246,000,000	0.004625
NEVADA	84,000,000	38,000,000	3,000,000	26,000,000	151,000,000	0.002839
N HAMPSHIRE	240,000,000	8,000,000	9,000,000	298,000,000	555,000,000	0.010435
N JERSEY	2,257,000,000	144,000,000	180,000,000	508,000,000	3,089,000,000	0.058081
N MEXICO	108,000,000	1,000,000	0	43,000,000	152,000,000	0.002858
NEW YORK	3,267,000,000	319,000,000	106,000,000	1,175,000,000	4,867,000,000	0.091512
NORTH CAROLINA	283,000,000	106,000,000	97,000,000	536,000,000	1,022,000,000	0.019216
NORTH DAKOTA	23,000,000	0	0	8,000,000	31,000,000	0.000583
OHIO	781,000,000	581,000,000	99,000,000	1,193,000,000	2,654,000,000	0.049902
OKLAHOMA	252,000,000	79,000,000	13,000,000	126,000,000	470,000,000	0.008837
OREGON	147,000,000	27,000,000	78,000,000	185,000,000	437,000,000	0.008217
PENNSYLVANIA	1,307,000,000	295,000,000	14,000,000	324,000,000	1,940,000,000	0.036477
RHODE ISLAND	132,000,000	13,000,000	1,000,000	93,000,000	239,000,000	0.004494
SOUTH CAROLINA	317,000,000	50,000,000	75,000,000	405,000,000	847,000,000	0.015926
SOUTH DAKOTA	67,000,000	20,000,000	1,000,000	24,000,000	112,000,000	0.002106
TENNESSEE	424,000,000	97,000,000	157,000,000	376,000,000	1,054,000,000	0.019818
TEXAS	1,663,000,000	233,000,000	225,000,000	1,285,000,000	3,406,000,000	0.064042
UTAH	319,000,000	73,000,000	43,000,000	56,000,000	491,000,000	0.009232
VERMONT	76,000,000	29,000,000	4,000,000	19,000,000	128,000,000	0.002407
VIRGINIA	604,000,000	66,000,000	18,000,000	226,000,000	914,000,000	0.017186
WASHINGTON	1,037,000,000	18,000,000	124,000,000	633,000,000	1,812,000,000	0.034070
W VIRGINIA	390,000,000	20,000,000	5,000,000	199,000,000	614,000,000	0.011545
WISCONSIN	616,000,000	33,000,000	52,000,000	710,000,000	1,411,000,000	0.026531
WYOMING	34,000,000	8,000,000	1,000,000	9,000,000	52,000,000	0.000978
A SAMOA	15,000,000	0	0	18,000,000	33,000,000	0.000620
GUAM	23,000,000	0	2,000,000	8,000,000	33,000,000	0.000620
N MARIANAS	13,000,000	1,000,000	0	17,000,000	31,000,000	0.000583
PUERTO RICO	394,000,000	4,000,000	26,000,000	375,000,000	799,000,000	0.015023
TRUST TERR	59,000,000	1,000,000	0	22,000,000	82,000,000	0.001542
VIRGIN ISLANDS	16,000,000	0	1,000,000	10,000,000	27,000,000	0.000508
					0	0.000000
	20,616,000,000	5,118,000,000	2,821,000,000	16,629,000,000	53,184,000,000	1.000000

TABLE 3

STATE	Present Allotment	2000 Needs	log needs	percent total	8.5% total
Alaska	0.006101	264	2.4216	0.088978	0.007563
Nebraska	0.005214	246	2.3909	0.087850	0.007467
Hawaii	0.007095	241	2.3820	0.087523	0.007439
Rhode Island	0.006750	239	2.3784	0.087391	0.007428
Idaho	0.004965	213	2.3284	0.085554	0.007272
New Mexico	0.004965	152	2.1818	0.080167	0.006814
Nevada	0.004965	151	2.1790	0.080064	0.006805
Vermont	0.004965	120	2.1072	0.077426	0.006581
South Dakota	0.004965	112	2.0492	0.075295	0.006400
Delaware	0.004965	72	1.8573	0.068244	0.005801
Montana	0.004965	54	1.7324	0.063655	0.005411
Wyoming	0.004965	52	1.7160	0.063052	0.005359
North Dakota	0.004965	31	1.4914	0.054799	0.004658
	0.070645	1955	27.2156	0.999998	0.085000

TABLE 4

STATE	PRESENT ALLOTMENT	2000 NEEDS	NEEDS % TOTAL	LOG NEEDS	LOG % TOTAL	LOG CUBED	CUBE % TOTAL	9%
UTAH	0.005371	491	0.1522	2.6911	0.1296	19.4886	0.1387	0.012486
KANSAS	0.009201	479	0.1485	2.6803	0.1291	19.2561	0.1371	0.012337
OKLAHOMA	0.008235	470	0.1457	2.6721	0.1287	19.0791	0.1358	0.012223
OREGON	0.011515	437	0.1355	2.6405	0.1271	18.4098	0.1310	0.011794
ARKANSAS	0.006668	431	0.1336	2.6345	0.1269	18.2045	0.1302	0.011714
COLORADO	0.008154	347	0.1076	2.5403	0.1223	16.3934	0.1167	0.010503
MAINE	0.007788	302	0.0936	2.4800	0.1194	15.2531	0.1086	0.009772
DIST OF COL	0.004965	268	0.0831	2.4281	0.1169	14.3159	0.1019	0.009172
	0.061897	3225	1.0000	20.7669	1.0000	140.4805	1.0000	0.090001

TABLE 5

Future Year 2000 Publicly Owned Wastewater Treatment Needs
Eligible For Federal Financial Assistance Under the Clean Water Act

	Cat. I	Cat. II	Cat. IIIA	Cat. IIIB	Cat. IVa	Cat. IVB	Cat. V	Total All Categories	Percent of Total Needs
ALABAMA	282,000,000	84,000,000	89,000,000	2,000,000	366,000,000	245,000,000	0	1,068,000,000	0.010492
ALASKA	140,000,000	0	5,000,000	0	21,000,000	119,000,000	6,000,000	291,000,000	0.002859
ARIZONA	375,000,000	69,000,000	10,000,000	1,000,000	211,000,000	138,000,000	0	804,000,000	0.007898
ARKANSAS	261,000,000	48,000,000	30,000,000	2,000,000	139,000,000	92,000,000	0	572,000,000	0.005619
CALIFORNIA	2,318,000,000	117,000,000	339,000,000	468,000,000	1,708,000,000	849,000,000	514,000,000	6,313,000,000	0.062017
COLORADO	222,000,000	20,000,000	5,000,000	1,000,000	27,000,000	100,000,000	15,000,000	390,000,000	0.003831
CONNECTICUT	432,000,000	76,000,000	17,000,000	20,000,000	717,000,000	185,000,000	441,000,000	1,888,000,000	0.018547
DELAWARE	26,000,000	2,000,000	5,000,000	5,000,000	40,000,000	39,000,000	182,000,000	299,000,000	0.002937
DIST OF COL	97,000,000	171,000,000	0	0	0	0	31,000,000	299,000,000	0.002937
FLORIDA	1,352,000,000	290,000,000	117,000,000	18,000,000	1,656,000,000	1,097,000,000	3,000,000	4,533,000,000	0.044531
GEORGIA	352,000,000	191,000,000	67,000,000	15,000,000	338,000,000	311,000,000	169,000,000	1,443,000,000	0.014176
HAWAII	148,000,000	0	0	19,000,000	322,000,000	93,000,000	0	582,000,000	0.005717
IDAHO	137,000,000	11,000,000	6,000,000	3,000,000	130,000,000	59,000,000	8,000,000	354,000,000	0.003478
ILLINOIS	707,000,000	300,000,000	166,000,000	38,000,000	190,000,000	281,000,000	2,522,000,000	4,204,000,000	0.041299
INDIANA	353,000,000	130,000,000	21,000,000	3,000,000	286,000,000	134,000,000	1,215,000,000	2,142,000,000	0.021042
IOWA	451,000,000	92,000,000	63,000,000	2,000,000	175,000,000	215,000,000	166,000,000	1,094,000,000	0.010747
KANSAS	173,000,000	1,000,000	20,000,000	22,000,000	109,000,000	285,000,000	252,000,000	862,000,000	0.008468
KENTUCKY	316,000,000	105,000,000	80,000,000	6,000,000	636,000,000	450,000,000	201,000,000	1,794,000,000	0.017624
LOUISIANA	466,000,000	25,000,000	85,000,000	18,000,000	461,000,000	333,000,000	0	1,388,000,000	0.013635
MAINE	166,000,000	2,000,000	22,000,000	10,000,000	233,000,000	112,000,000	387,000,000	932,000,000	0.009156
MARYLAND	272,000,000	595,000,000	57,000,000	57,000,000	254,000,000	186,000,000	25,000,000	1,446,000,000	0.014205
MASSACHUSETTS	1,404,000,000	116,000,000	35,000,000	20,000,000	935,000,000	733,000,000	1,453,000,000	4,696,000,000	0.046132
MICHIGAN	1,250,000,000	267,000,000	39,000,000	97,000,000	580,000,000	649,000,000	730,000,000	3,612,000,000	0.035483
MINNESOTA	474,000,000	132,000,000	19,000,000	20,000,000	151,000,000	252,000,000	514,000,000	1,562,000,000	0.015345
MISSISSIPPI	268,000,000	84,000,000	59,000,000	1,000,000	125,000,000	161,000,000	0	698,000,000	0.006857
MISSOURI	1,049,000,000	4,000,000	49,000,000	272,000,000	307,000,000	505,000,000	1,025,000,000	3,211,000,000	0.031544
MONTANA	20,000,000	2,000,000	1,000,000	1,000,000	26,000,000	31,000,000	1,000,000	82,000,000	0.000806
NEBRASKA	177,000,000	0	1,000,000	1,000,000	29,000,000	68,000,000	16,000,000	292,000,000	0.002869
NEVADA	84,000,000	38,000,000	3,000,000	3,000,000	29,000,000	26,000,000	0	183,000,000	0.001798
N HAMPSHIRE	240,000,000	8,000,000	9,000,000	5,000,000	339,000,000	298,000,000	224,000,000	1,123,000,000	0.011032
N JERSEY	2,257,000,000	144,000,000	100,000,000	78,000,000	341,000,000	508,000,000	1,176,000,000	4,684,000,000	0.046014
N MEXICO	108,000,000	1,000,000	0	1,000,000	43,000,000	43,000,000	0	196,000,000	0.001925
NEW YORK	3,267,000,000	239,000,000	186,000,000	1,507,000,000	2,683,000,000	1,175,000,000	6,127,000,000	15,184,000,000	0.149164
NORTH CAROLINA	283,000,000	106,000,000	97,000,000	1,000,000	546,000,000	536,000,000	1,000,000	1,570,000,000	0.015423
NORTH DAKOTA	23,000,000	0	0	0	6,000,000	8,000,000	8,000,000	45,000,000	0.000442
OHIO	781,000,000	501,000,000	99,000,000	233,000,000	708,000,000	1,193,000,000	1,239,000,000	4,834,000,000	0.047508
OKLAHOMA	252,000,000	79,000,000	13,000,000	11,000,000	112,000,000	126,000,000	0	593,000,000	0.005825
OREGON	147,000,000	27,000,000	78,000,000	18,000,000	331,000,000	185,000,000	444,000,000	1,230,000,000	0.012083
PENNSYLVANIA	1,307,000,000	295,000,000	14,000,000	3,000,000	1,376,000,000	324,000,000	1,430,000,000	4,749,000,000	0.046653
RHODE ISLAND	132,000,000	13,000,000	1,000,000	39,000,000	187,000,000	93,000,000	316,000,000	781,000,000	0.007672
SOUTH CAROLINA	317,000,000	50,000,000	75,000,000	0	379,000,000	405,000,000	0	1,226,000,000	0.012044
SOUTH DAKOTA	67,000,000	20,000,000	1,000,000	1,000,000	4,000,000	24,000,000	24,000,000	141,000,000	0.001385
TENNESSEE	424,000,000	97,000,000	[illegible]	12,000,000	535,000,000	376,000,000	610,000,000	2,211,000,000	0.021720
TEXAS	1,663,000,000	233,000,000	225,000,000	17,000,000	722,000,000	1,285,000,000	0	4,145,000,000	0.040719
UTAH	319,000,000	73,000,000	43,000,000	0	76,000,000	56,000,000	0	567,000,000	0.005570
VERMONT	76,000,000	29,000,000	4,000,000	7,000,000	62,000,000	19,000,000	86,000,000	283,000,000	0.002780
VIRGINIA	604,000,000	66,000,000	18,000,000	2,000,000	463,000,000	226,000,000	170,000,000	1,549,000,000	0.015217
WASHINGTON	1,037,000,000	18,000,000	124,000,000	87,000,000	808,000,000	633,000,000	658,000,000	3,365,000,000	0.033057
W VIRGINIA	390,000,000	20,000,000	5,000,000	3,000,000	764,000,000	199,000,000	615,000,000	1,996,000,000	0.019606
WISCONSIN	616,000,000	33,000,000	52,000,000	7,000,000	220,000,000	710,000,000	183,000,000	1,821,000,000	0.017899
WYOMING	34,000,000	8,000,000	1,000,000	0	2,000,000	9,000,000	0	54,000,000	0.000530
A SAMOA	15,000,000	0	0	0	7,000,000	18,000,000	0	40,000,000	0.000393
GUAM	23,000,000	0	2,000,000	1,000,000	7,000,000	8,000,000	0	41,000,000	0.000403
N MARIANAS	13,000,000	1,000,000	0	0	51,000,000	17,000,000	0	82,000,000	0.000806
PUERTO RICO	394,000,000	4,000,000	26,000,000	14,000,000	1,252,000,000	375,000,000	20,000,000	2,085,000,000	0.020493
TRUST TERR	59,000,000	1,000,000	0	0	35,000,000	22,000,000	0	117,000,000	0.001149
VIRGIN ISLANDS	16,000,000	0	1,000,000	0	21,000,000	10,000,000	0	48,000,000	0.000472
								0	
	28,616,000,000	5,118,000,000	2,821,000,000	3,172,000,000	22,231,000,000	16,629,000,000	23,207,000,000	101,734,000,000	1.000000

ELIGIBILITIES AFTER 1990

The bill amends three sections of the Act to provide consistency between programmatic aspects of title II and the funding phaseout. The bill amends section 202(a)(1) of the Act to prohibit grandfathering of the 75 percent Federal share for grants for phased or segmented projects that receive a grant award on or after October 1, 1990. Section 204(c) of the Act is amended to prohibit grandfathering of reserve capacity for phased or segmented projects that receive a grant award on or after October 1, 1990. Section 205(g)(1) of the Act is amended to extend the Administrator's authority to reserve four percent of the State's allotment through fiscal year 1994 for the purpose of making grants to States for the management of the delegated construction grant program. This is to assure that management funds will be available for any project constructed within the legal obligation period after 1990.

These amendments will affect the eligible costs of projects that receive a grant out of the 1990 allotment in 1991 or deobligated funds. The scope of the potential projects affected by these prohibitions are phased or segmented projects that receive their first Federal grant before October 1, 1984. These changes will focus the limited Federal spending authority on backlogged core treatment needs (secondary treatment, advanced treatment, inflow-infiltration correction, and new interceptors) and enable the limited Federal dollar to reach more projects in more communities.

DESIGN-BUILD PROJECTS

Section 203 of the Act is amended to provide that communities applying for construction grant assistance may enter into an agreement with the Administrator to erect treatment works under alternate "design-build" grant management procedures. This alternate management procedure allows applicants to contract for both the design and construction of treatment works, thereby avoiding several costly review and bidding requirements.

The agreement between the applicant and Administrator provides for a specified Federal contribution, start and end dates for construction, effective project management procedures, and a bond to assure performance.

The design-build approach to project management has several advantages. By bringing together the designer and the builder at the start of a project, they can work as a team to tailor construction plans and designs to the specific project and the contractor's construction methods and schedule. This results in efficiencies and savings which are not achieved in separate design and construction. In addition, by better coordination of design and construction, projects can be constructed more quickly and, therefore, at a lower cost.

Design-build project management procedures are limited to those projects which have a total cost of less than $8 million and are specified, simple treatment systems (e.g., aerated lagoons). In addition, not more than 25 percent of a State grant allocation may be used under this alternate management procedure.

INNOVATIVE AND ALTERNATIVE PROJECTS

The bill amends section 205(i) of the Act to extend through fiscal year 1990 the requirement that a percentage of allotted funds be reserved to be used to increae the Federal share for innovative and alternative projects.

The purpose of maintaining the reserve is to encourage the utilization of innovative and alternative technologies.

MARINE CSO'S AND ESTUARIES

The reported bill amends section 205 of the Act by adding a new subsection. Subsection (1) provides that the Administrator shall reserve, prior to allotment, one and a half percent of the sums authorized to be appropriated under section 207 of the Act for marine combined sewer overflow problems and estuaries. Two-thirds of the reserve, or one percent of the construction grants appropriation, shall be available for marine CSO correction where lower levels of water quality exist in marine bays and estuaries as a result of discharges by marine CSO's. The remaining one third of the reserve, or one half of one percent of the construction grants appropriation, shall be made available to supplement the funding of the newly established National Estuary Program pursuant to section 320 of the Act. Section 320 provides for the establishment of an estuarine management conference to address water quality problems in estuaries by developing and implementing comprehensive conservation and management plans. The total reserve authorized by section 205(l) is subject to the two year period of availability for obligation as provided for in section 205(d).

The estuaries of the U.S. are vital in the ecosystems which have been detrimentally affected by the municipal pollution problems of the ever increasing urban populations residing on their shores and other pollution problems such as industrial point source pollution and agricultural runoff nonpoint source pollution. Two-thirds of the reserve is focused on municipally generated pollution due to marine CSO discharges. One-third of the reserve may supplement the funds available for the National Estuarine Program.

INDIAN TRIBES

The bill amends title II of the Clean Water Act to accord Indian tribes assistance in the development and implementation of wastewater treatment facilities, including a one-year study of sewage treatment needs of Indian lands. Beginning in fiscal 1987, the section authorizes the use of up to one-half of one percent of the construction grants program for grants to Indian tribes to address unmet needs identified by the Administrator's report. This section also adds a definition of Indian tribes to the definitions contained in section 502 of the Act.

Title II of the Act is amended to direct the Administrator of the Environmental Protection Agency to conduct a study, in coordination with the Director of Indian Health Services, Department of Health and Human Services, to assess sewage treatment needs to serve Indian tribes. Additionally, this study will identify the degree to which such needs will be met through funds allotted to States under the construction grants program, and identify any obstacles which may prevent these needs from being met. Within one year of the date of enactment of the Clean Water Act amendments of 1985, the Administrator is directed to submit such report to Congress. However, if timely, the report may be submitted as part of the 1986 Needs Survey.

The Act is further amended to make tribes eligible, beginning in fiscal 1987, for direct EPA construction grants to address unmet needs identified in the Administrator's report to Congress. The Administrator is authorized to treat Indian tribes as States to the degree necessary to allot funds for sewage treatment needs, and is authorized to waive, where necessary, the non-Federal cost-sharing requirement, consistent with the trust responsibility and relationship which exists between tribal governments and the Federal Government.

Finally, this section adds to the Act a definition of Indian tribes specifying that, for the purposes of the Clean Water Act, the Indian tribes to be covered by the provisions of this section include any Indian tribe, band, nation, or other organized group or community, including an Alaska Native village, which is recognized as eligible for the special programs and services provided by the United States. The definition does not include Alaska Native regional or village corporations, which are organized for other purposes.

STATE WATER POLLUTION CONTROL REVOLVING FUNDS

The bill adds a new title VI to the Clean Water Act to provide for the establishment of State-administered Water Pollution Control Revolving Funds (SRFs). The creation of SRFs through a program of capitalization grants to States will provide a feasible transition to State and local financing of municipal wastewater treatment facilities. The intent of title VI is to set up viable funding alternatives to the current grant mechanism. To that end, the provisions of title VI have been designed to assure the formation of financially-sound, environmentally-oriented revolving loan programs. The following major provisions and principles must be understood in examining the intent of title VI.

To complete the remaining core municipal wastewater treatment needs, funds must be dedicated as quickly as possible. This policy is implemented through sections 602(b)(4) and 602(b)(5) which require that binding loan agreements for the use of Federal funds be completed within one year of receipt of such funds, and that the projects financed with such loans comply with the eligibility and other requirements that are applicable to grant-funded projects under title II. In addition to meeting title II eligibility requirements, a State must also commit to first using its revolving fund resources in financing the construction of municipal treatment works needed to meet the 1988 municipal compliance deadline. Title VI provisions also help achieve the objective of timely compliance by allowing a municipality to proceed with its own funds to begin construction immediately and still benefit at a later date from an attractive refinancing package the SRF might offer. Thus, the shift to a loan program need not constitute impediments to compliance with the goals of the Act. On the contrary, the refinancing feature of the revolving loan program would eliminate the disincentive that now exists with the grants program.

The Federal contribution of funds is premised, in part, on the creation of SRFs which will make new loans from the repayment of an initial set of loans. In addition to targeting funds to new municipal wastewater treatment projects as expeditiously as possible, the State must commit the funds in a form that will generate needed cash flows for making future loans. Section 603(b)(4) and 603(c) of title VI are intended for States to make sound loans on reasonable terms that will generate repayments. It is not the intent of the bill that States leave significant amounts of funds idle in investment accounts, nor is it the intent that the States assume any local loan through default or develop extensive nonrevenue generation agreements with municipalities. To assure sound loans and limits on future State liability, all transactions must be backed by approved local agreements as contracts with SRFs. SRFs should have authority to require adequate local user charges to address local nonperformance or default.

It is important that State managers develop adequate revenue streams from the projects initially funded by the revolving fund. Once maintenance of progress on the completion of all projects needed to meet the enforceable requirements of Act is assured States may finance other municipal wastewater needs or capital components of nonpoint source control and estuaries programs under section 319 and 320 of the Act.

AUTHORIZATION, ALLOTMENT, AWARD AND PAYMENT

Section 601 authorizes $8.4 billion in the period beginning fiscal year 1989 and ending fiscal year 1994 and provides that appropriations from the authorized amounts be allotted among the States in accordance with the same allocation formula that is used to allot title II construction grant funds. Funds allotted under a grant award in a given fiscal year must be made by the end of that fiscal year. Funds allotted to a State that have not been awarded by the end of the fiscal year that such funds became available will be reallotted among the States that have already established acceptable State Revolving Funds.

The Administrator is authorized to award a capitalization grant to a State if an agreement that meets the terms of section 602 has been reached. Payments will be made based on a schedule that a State negotiates with the Administrator and shall not be more frequent than quarterly. In developing a schedule of payments, the Administator shall take into account the loan commitments that a State Revolving Fund has made or is expected to make, the factors affecting the pace of construction within a State, the amount of funds already available but not expended by the SRF, and the timing and amount of various borrowing needs of municipalities, States and the Federal government.

Subsection (f) of section 601 details the procedures for withholding payments to a State Water Pollution Control Revolving Fund in the case of non-compliance with the provisions of title VI or the capitalization grant agreement. The Administrator would be required to notify the State of the non-compliance and describe the necessary corrective action. If corrective action is not taken within a 60-day period following the notice, the Administrator would be authorized to withhold scheduled payments of funds to State Water Pollution Control Revolving Fund. In cases of continued non-compliance where the State had not taken corrective action within twelve months of the notice under subsection (f), then the withheld funds would be reallocated among the other States.

CAPITALIZATION GRANT AGREEMENTS WITH STATES

Under Section 602 States are required to enter into agreements with the Administrator prior to receiving the award of a capitalization grant.

A State must establish (through statute or other legal mechanism creating a legal entity of the State with the powers and limitations prescribed in this bill) a revolving fund dedicated solely to such purposes. The State must also negotiate a schedule of payments as described in section 601(e) above. Prior to receiving payments, a State must make a 15 percent matching contribution to the revolving funds. This section also enables a State to meet the 15 percent matching requirement by depositing State monies in the dedicated revolving fund during fiscal years prior to the fiscal year that Federal grant funds are received.

All funds available to the revolving fund must be committee in an expeditious and timely manner; funds provided by capitalization grants (or an amount equal to such funds), however, must be made available to loan recipients in binding loan agreements within one year of receipt of the Federal funds by the State Revolving Fund. Binding loan commitments entered into within 12 months of receipt of a Federal grant payment may also be greater than 100 percent of the amount of the Federal grant payment. Any treatment project that is financed with funds directly made available by capitalization grants, prior to fiscal year 1985, will have to meet the same requirements that the project would have had to have met if it had received a grant under Title II. The applicable requirements of Title II are those that refer to projects, and do not include programmatic features of the Title II construction grants program such as Federal grant shares, allotments and set-asides, and authorizations. The requirements of the Clean Water Act applicable to grant-funding projects include provisions of sections 201, 203(a), 204, 211, 212, 215, 217, 218, 219, and 511(c) and 513 of the Clean Water Act. As such, the eligibility restrictions set forth in the 1981 Amendments would apply to treatment projects financed through funds directly made available by Federal capitalization grants. A State must further agree to first use funds available in the State Revolving Fund to assure maintenance of progress in completing municipal treatment works needed to comply with enforceable requirements of the Act, including the 1988 municipal compliance deadline.

Finally, the State must agree to establish loan requirements, regulations, fiscal controls and procedures, accounting and auditing methods that will comply with applicable State law, and generally accepted government accounting standards. On an annual basis, the State will make a report of its intended use of the funds and its actual use of funds for the previous year.

STATE WATER POLLUTION CONTROL REVOLVING FUNDS

Section 603 provides that a State must establish a Water Pollution Control Revolving Fund, which must be administered by an instrumentality of the State, to be eligible for an award of a capitalization grant. The State must provide the SRF with powers and impose limitations on the Revolving Fund; some of the powers and limitations are specified in the remaining subsections of section 603.

Section 603 also provides that SRFs be maintained and credited with repayments so that the fund balance shall be available in perpetuity. The Revolving Fund is dedicated for only two purposes: one, to provide financial assistance for the construction of publicly owned treatment works as defined in Section 212(2) of the Act; and two, to provide financial assistance (except from funds made directly available to the SRF in the capitalization grant) for the implementation of projects and programs established under sections 319 (Nonpoint Source Pollution Control Program) and 320 (National Estuarine Program). In both cases, the financial assistance must be for capital projects that are capable of enabling the State to establish a revenue stream to support repayment of the financial assistance. Subsection (c)(3) requires that a loan recipient establish a dedicated source of revenue to repay the loan. In providing for the direct implementation of nonprofit pollution control and estuaries protection programs, States may make funds available to responsible parties including municipalities, intermunicipal organizations, interstate organizations, State agencies, and private organizations and individuals. In providing financial assistance to any such parties, the State shall comply with all limitations specified in the Act.

The SRF must be maintained through repayments in perpetuity. As provided in Section 603(b), loan repayments may be credited to debt service accounts within the Water Pollution Control Revolving Fund. The dedicated purpose of the SRF and the receipt of loan repayments must maintain the financial integrity of the Fund so that the Fund balance will be available in perpetuity.

Subsection (c) of section 603 provides the Revolving Fund with the authority to make loans, however certain conditions are placed on the Revolving Fund's loan making authority. These conditions are intended to maintain the financial integrity of the SRF without hampering the State's flexibility to use the Fund to address the varied needs of its communities. The interest rate cannot exceed market rate, though it may be zero and the terms shall not exceed 20 years; annual principal payments must be fully amortized not later than 20 years after project completion; the loan recipient must establish a dedicated source of revenue for repayment of the loan; and SRFs must be credited with all repayments of principal and interest on all loans.

The State Revolving Fund may buy or refinance debt obligations of local communities which were incurred for construction of publicly owned treatment works after March 7, 1985. The purpose of this provision is to encourage municipalities to proceed with construction with their own means of interim financing in advance of availability of a loan from the revolving fund, by offering municipalities the prospect of project refinancing at reasonably better financial terms at a later date. Thus, progress towards meeting the 1988 municipal compliance deadline will be aided.

Subsection (d)(2) of section 603 would allow a State Revolving Fund to guarantee, or purchase insurance for, local debt obligations. A similar provision in subsection (d)(4) would establish loan guarantees for a loan pool operated by a large intermunicipal agency. Under these provisions, a State Revolving Fund could reduce costs of borrowing for a community, but the State Revolving Fund would also assume certain risks of default on the guaranteed loans or debt obligations. In keeping with the principle that the revolving funds should generate positive future cash flows, the use of these mechanisms should be limited to a small portion of the revolving fund's current assets.

Subsection (d)(3) of section 603 would allow a State to use the State Revolving Fund and its chief assets (future revenues from loan repayments) as a basis for issuing bonds for further revolving fund activity. Under such an arrangement, a State would be able to leverage outstanding loans made from an initial set of capitalization grants, and thus make available significant amounts of money much sooner than would otherwise have been possible. Bonds may be issued by an instrumentality of the State, the State agency responsible for administering the Water Pollution Control Revolving Fund, or an interstate agency to which two or more States have given such responsibility.

Subsections (d)(5) and (d)(6) of section 603 would allow the State Revolving Fund to earn interest on fund accounts and use up to 4 percent of amounts available for administrative purposes. However, where appropriate the Administrator should take actions needed to assure that the use of this mechanism does not undermine the fiscal integrity of the SRFs.

AUDITS, REPORTS, AND FISCAL CONTROLS

Section 604 requires fiscal controls and accounting procedures be established for SRFs. The State is required to establish fiscal controls and procedures to assure proper accounting for payment periods, disbursements, and fund balances. All funds must be accounted for, including capitalization grants, State matching grant, and loan repayments.

The Administrator shall conduct, or the State shall have an entity independent of the State conduct, an audit, not less than annually, of the operations of each SRF. The audit, must be conducted in accordance with the Comptroller General's standards. The Administrator shall determine the time for completion and the manner of the audit. The requirement that the State have the audit conducted by an entity independent of the State would be satisfied if a State agency has been certified to carry out the audit by the Comptroller General or the State demonstrates to the satisfaction of the Administrator that it is fiscally unable to make a contract with an independent entity.

Subsection (c) of section 604 requires each State to prepare a plan for the intended uses of amounts available in the Revolving Fund. The intended use plan may be adopted from the priority systems and lists developed under section 216 of the Act for construction grant projects. The State may also consider other information on the extent and nature of water pollution problems. The State must provide an opportunity for public comment on the use of the funds. The intended use plan must include: the long and short term goals and objectives of the Revolving Fund; description of project categories that will receive financial assistance; discharge requirements under Title III and IV that will be met by funded projects; the terms of financial assistance granted; and the communities that will receive financial assistance; assurances for meeting the requirements that the Fund make loan commitments consistent with section 602(b)(4) and (5); and a description of the criteria and method established for the distribution of funds. The report will help assist States' fiscal and environmental planning in order to achieve the goals of the Act.

Subsection (d) of section 604 requires the State to prepare a report to the Administrator describing how the State implemented its intended use plan prepared pursuant to subsection (c). This report is to be prepared annually and the first report must be provided in the first fiscal year after receipt of payments. The report shall include identification of loan recipients, amounts, and terms.

Subsection (e) of Section 604 requires the Administrator to conduct an annual review of the intended use plan and the annual report to determine whether the State is complying with the requirements of this Title. Subsection (e) also requires that a State or loan recipient make records available to the Administrator, after reasonable notice, to help in making a determination.

STATE OPTION TO USE TITLE II FUNDS

The bill amends the Clean Water Act by adding a new subsection (m) to Section 205. This section would provide States with the option of using all or a portion of their funds available for obligation under Title II for capitalization grants for State Revolving Funds under Title VI. This provision is designed to encourage those States that have appropriate funding entitles in place to proceed with capitalization of their State Revolving Funds as soon as possible, provided the SRF is established in compliance with the requirements of title VI.

Funds available for obligation to a State under title II include a State's allotted share of a current year's appropriations, any unobligated carryover funds from the previous year's allotment, and funds made available through grant decreases or deobligations. The Governor of a State would be required to provide a notice of intent to use all or part of these funds in a timely fashion to the Administrator. The first notice would have to be provided within thirty days of enactment of the Clean Water Act Amendments of 1985. All subsequent notices would have to filed with the Administrator at least 90 days prior to the beginning of the fiscal year. Since the State has an option, at its discretion, to use any portion of the funds available for obligation within that State, the State may choose to use any unobligated funds, including unobligated set-aside funds, as a basis for early or additional capitalization of State Revolving Funds under title VI.

A State is not required to completely convert its program to a loan program under this option. It could, for example, reserve a portion of its funds for grants to cities which need funds to meet the 1988 deadline while shifting the remainder to the SRF. Each State may choose to address these circumstances differently.

REPORT TO CONGRESS

The bill amends section 516 of the Act to provide that the Administrator submit a report to Congress on the financial status and operations of the Water Pollution Control Revolving Funds. The purpose of this report is to assess the effectiveness of SRFs by reviewing the financial viability of the Funds and the use of loans in accomplishing the pollution control goals of the Act, and comparing the impacts of loans to the impacts of grants.

HEARINGS

The Subcommittee on Environmental Pollution held three days of hearings (March 26, 27, and 28, 1985) at which time testimony was taken from representatives of the administration, environmental and industry groups, State and local officials, financial experts, and other interested parties.

ROLLCALL VOTERS

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of this bill be announced in this report.

There were two rollcall votes taken during consideration of this bill. Each of those votes was publicly announced during the open meetings of the Committee for marking up this legislation. The tabulation of those votes is available in the Committee's files.

A third rollcall vote resulted in a 13-2 vote to report the bill. Voting in favor of reporting the bill were Senators Abdnor, Baucus, Bentsen, Burdick, Chafee, Domenici, Hart, Humphrey, Lautenberg, Mitchell, Simpson, Symms, and Stafford. Voting in the negative were Senators Durenberger and Moynihan.

EVALUATION OF REGULATORY IMPACT

In compliance with section 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact of the reported bill.

The reported bill requires effluent limitations to be established to protect the nation's waters from additional degradation due to toxic pollutants. This is not new authority in the Clean Water Act but simply augments authority that has existed since 1972. The reported bill also requires State develop nonpoint source pollution management programs to be reviewed and approved by the Administrator of EPA. This provision is consistent with existing provisions under the Clean Water Act to control pollution of the Nation's waters. The reported bill also authorizes grants to States for the establishment of water pollution control revolving loan funds for the construction of publicly owned treatment works. To qualify for funds, States must enter into agreements with the Administrator of EPA. It is not expected that there will be any new regulatory burdens created by the reported bill, beyond that currently authorized by the Act.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires each bill to contain a statement of the cost of such bill prepared by the Congressional Budget Office. That report follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 14, 1985.

Hon ROBERT T. STAFFORD,
Chairman, Committee on Environment and Public Works, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for the Clean Water Act Amendments of 1985.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

JAMES BLUM
(For Rudolph G. Penner).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE, MAY 14, 1985

1. Bill number: Not yet assigned.
2. Bill title: Clean Water Act Amendments of 1985.
3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, May 1, 1985.
4. Bill purpose: This bill would reauthorize water quality programs administered by the Environmental Protection Agency (EPA). The construction grants program would be reauthorized at a level of $2.4 billion a year through fiscal year 1988, and $1.2 billion annually for fiscal years 1989 and 1990.

Authorizations for grants aiding states in capitalizing revolving funds would begin at a level of $1.2 billion a year in 1989 and 1990 with the authorization level dropping to $600 million for 1994.

Finally, this bill would require the EPA to charge fees to reflect the agency's cost of processing alternative requirement applications for national effluent limitation guidelines or pretreatment standards. Sums collected would be deposited in the Treasury as miscellaneous receipts.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Revenues	4	4	3	3	2
Authorization level	2,879	2,909	2,939	2,796	2,485
Estimated outlays	267	694	1,479	3,439	3,228

The costs of this bill fall within budget function 300.

Additional outlays of about $5 billion would occur after fiscal year 1990 for the construction grants program.

Basis of estimate: For the purposes of this estimate, it is assumed that this bill will be enacted during fiscal year 1985 and that the full sums authorized will be appropriated prior to the beginning of each fiscal year. Outlays have been estimated on the basis of historical spending patterns. Revenues arising from the deposit of application fees into the general fund have been estimated on the basis of information obtained from the EPA.

6. Estimated cost to State and local governments: CBO has not completed its estimate of the costs to state and local governments. This estimate will be transmitted separately at a later date.
7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by: Deborah Reis.
10. Estimate approved by: C.G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.

ADDITIONAL VIEWS OF MR. MOYNIHAN AND MR. DURENBERGER

The Committee approved a change in the allocation of sewage treatment construction grants that is both unwise and unfair. Under the new formula, grants to eighteen States would be reduced. Most of these losing States are populous, urban States in the East and Midwest. Every State bordering on the Great Lakes would experience at least a 19 percent reduction in funding.

This is especially unfortunate when one considers that many of the same States have historically been neglected by Federal water programs generally. For example, between 1956 and 1980, only 1.2 percent of the total water resources spending by the Corps of Engineers, Bureau of Reclamation, Tennessee Valley Authority, and Soil Conservation Service went to New York. The Environmental Protection Agency's construction grants program has been more equitable, but equity would be threatened by the new formula.

The new formula is designed to transfer grant resources from populous States to small States and from the East and Great Lakes regions to growing areas in the South and West. Although ostensibly based on needs, it has numerous flaws.

The formula uses so-called "eligible needs" as a basis for allocating funds. No weight is given to combined sewer overflows, a major cause of water quality degradation in older urban areas. In 1981 Congress narrowed the list of project categories eligible for Federal funding but wisely gave governors the discretion to use up to 20 percent of a state's allotment for the correction of combined sewer overflows. It makes no sense to use Federal funds for this vital type of work but to ignore the need in the allocation of the funds.

Equally objectionable is the arbitrary classification of states into three groups. Funding would be distributed to each group in a manner designed to favor small states with relatively low levels of need. One group, for example, consists of the 13 states with the lowest estimated needs. This group collectively accounts for 3.7 percent of the eligible needs but would receive 8.5 percent of the grant funding.

The arbitrary nature of the formula is further revealed by the distribution of funds within each group of States. A different mathematical algorithm is used for each group. For some States, the share of funding is determined by the cube of the logarithm of the eligible needs. Why not the square or the fourth power of the logarithm? It would make every bit as much sense—which is to say, none.

This radical change in the allocation of grant funds would have disproportionate effects on major bodies of water. Most importantly, the change would significantly hinder our efforts to improve water quality in the Great Lakes. In the Great Lakes Water Quality Agreement of 1978, the United States joined Canada in a commitment to control major sources of water pollution. The agreement includes specific goals for a wide range of pollutants and sources. For example, the concentration of phosphorous in sewage treatment plant effluent must not exceed one milligram per liter. Equally important, the agreement requires each nation to provide adequate funding to meet the water quality goals.

A General Accounting Office study in 1982 found that the United States is far from meeting its commitments under the 1978 agreement. According to the GAO, the U.S. has lagged considerably behind schedule in providing adequate municipal wastewater treatment in the Great Lakes basin. Furthermore, little progress has been made toward controlling combined sewer overflows. As a result, eutrophication and toxic chemical pollution continue to plaque the lakes. Progress would only be further slowed by the proposed new allocation formula, which reduces grants to the Great Lakes states by $175 million annually.

Similarly, virtually the entire drainage area of Chesapeake Bay lies in states that would lose funding. The Committee recognized the unique character of the Great Lakes and Chesapeake Bay by authorizing in this bill modest programs to improve the management of those resources. The damage done by the new formula would more than offset the benefits of these programs.

A radical change in the allocation of construction grants is unwarranted. If a change must be made, large states and particular regions should not be unfairly penalized.

DAVE DURENBERGER.
DANIEL PATRICK MOYNIHAN.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman:

FEDERAL WATER POLLUTION CONTROL ACT, AS AMENDED

(33 U.S.C. 466 et seq.)

AN ACT To provide for water pollution control activities in the Public Health Service of the Federal Security Agency and in the Federal Works Agency, and for other purposes.

TITLE I—RESEARCH AND RELATED PROGRAMS

* * * * * * *

RESEARCH, INVESTIGATIONS, TRAINING, AND INFORMATION

Sec. 104. (a) * * *

* * * * * * *

(q)(1) * * *

* * * * * * *

(4) Notwithstanding section 205(d) of this Act, from funds that are set aside by States under section 205(i) of this Act and not obligated by the end of the twenty-four month period provided under section 205(d), the Administrator shall award a grant under this section in the amount of $1,000,000 or such unobligated amount, whichever is less, in each year, to support a National Clearinghouse to collect and disseminate information on small flows and innovative or alternative technologies, consistent with paragraph (3).

* * * * * * *

(u) There is authorized to be appropriated (1) not to exceed $100,000,000 per fiscal year for the fiscal year ending June 30, 1973, the fiscal year ending June 30, 1974, and the fiscal year ending June 30, 1975, and not to exceed $14,039,000 for the fiscal year ending September 30, 1980, and not to exceed $20,697,000 for the fiscal year ending September 30, 1981, and not to exceed $22,770,000 for the fiscal year ending September 30, 1982, *and not to exceed $22,770,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989,* for carrying out the provisions of this section, other than subsections (g) (1) and (2), (p), (r), and (t), except that such authorizations are not for any research, development, or demonstration activity pursuant to such provisions; (2) not to exceed

$7,500,000 for fiscal years 1973, 1974, and 1975, $2,000,000 for fiscal year 1977, $3,000,000 for fiscal year 1978, $3,000,000 for fiscal year 1979, $3,000,000 for fiscal year 1980, $3,000,000 for fiscal year 1981, and $3,000,000 for fiscal year 1982, *and not to exceed $3,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989,* for carrying out the provisions of subsection (g)(1); (3) not to exceed $2,500,000 for fiscal year 1973, 1974, and 1975, $1,000,000 for fiscal year 1977, $1,500,000 for fiscal year 1978, $1,500,000 for fiscal year 1979, $1,500,000 for fiscal year 1980, $1,500,000 for fiscal year 1981, [and] $1,500,000 for fiscal year 1982, *and not to exceed $1,500,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989,* for carrying out the provisions of subsection (g)(2); (4) not to exceed $10,000,000 for each of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (p); (5) not to exceed $15,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (r); and (6) not to exceed $10,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (t).

GRANTS FOR POLLUTION CONTROL PROGRAMS

SEC. 106. (a) There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purposes of this section—

(1) $60,000,000 for the fiscal year ending June 30, 1973; and

(2) $75,000,000 for the fiscal year ending June 30, 1974 and the fiscal year ending June 30, 1975, $100,000,000 per fiscal year for the fiscal years 1977, 1978, 1979, and 1980 $75,000,000 per fiscal year for the fiscal years 1981, [and] 1982, *1986, 1987, 1988, and 1989*

for grants to States and to interstate agencies to assist them in administering programs for the prevention, reduction, and elimination of pollution, including enforcement directly or through appropriate State law enforcement officers or agencies.

DEFINITIONS AND AUTHORIZATIONS

SEC. 112. (a) * * *

* * * * * * *

(c) There are authorized to be appropriated $25,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, $6,000,000 for the fiscal year ending September 30, 1977, $7,000,000 for the fiscal year ending September 30, 1978, $7,000,000 for the fiscal year ending September 30, 1979, $7,000,000 for the fiscal year ending September 30, 1980, $7,000,000 for the fiscal year ending September 30, 1981, [and] $7,000,000 for the fiscal year ending September 30, 1982, *and $7,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30,* *1987, September 30, 1988, and September 30, 1989,* to carry out sections 109 through 112 of this Act.

* * * * * * *

CHESAPEAKE BAY

SEC. 117. (a) The Administrator shall continue the Chesapeake Bay Program and shall establish and maintain in the Environmental Protection Agency an Office, Division, or Branch of Chesapeake Bay Programs to—

(1) collect and make available, through the publications and other appropriate means, the results of and other information pertaining to research and other activities that address the environmental quality of the Chesapeake Bay (hereinafter "the Bay");

(2) coordinate all Federal research projects pertaining to the Bay;

(3) conduct research to determine the impact or sediment deposition in the Bay and to identify the sources, rates, routes, and distribution patterns of such sediment deposition; and

(4) conduct research on the impact of natural and man-induced environmental changes on the living resources of the Bay and the relationships between such changes. Particular emphasis shall be placed on researching the impact of pollutant loadings of nutrients, chlorine, acid precipitation, dissolved oxygen, and toxic pollutants, including organic chemicals and heavy metals. Special attention shall be given to the impact of such changes on the striped bass.

(b)(1) The Administrator shall, at the request of the Governor of a State affected by the interstate management plan developed pursuant to the Chesapeake Bay Program (hereinafter "the plan"), make a grant for the purpose of implementing the management mechanisms contained in the plan if such State has, within one year after the date of enactment of the Clean Water Act Amendments of 1985, approved and committed to implement all or substantially all aspects of the plan. Payments for such purpose may be made to the States as hereinafter provided, subject to such terms and conditions as the Administrator considers appropriate.

(2) A State or combination of States may elect to avail itself of the benefits of this subsection by submitting to the Administrator a comprehensive proposal to implement management mechanisms contained in the plan which shall include (A) a description of proposed abatement actions which the State commits to take within a specified time period to reduce pollution in the Bay and to meet applicable water quality standards, and (B) the estimated cost of the abatement actions proposed to be taken during the next fiscal year. If the Administrator finds that such proposal is consistent with the national policies set forth in section 101(a) of this Act and will contribute to the achievement of the national goals set forth in section 101(a) of this Act he shall approve such proposal and shall finance the costs of implementing segments of such proposal; except that Federal grants under this subsection shall not exceed 55 per centum of the costs of implementing the plan in any fiscal year and shall be

made on condition that non-Federal sources provide the remainder of the cost of implementing the plan during such fiscal year.

(3) Administrative costs in the form of salaries, overhead or indirect costs for services provided and charged against programs or projects supported by funds made available under this subsection shall not exceed in any one fiscal year 10 per centum of the annual Federal grant made to a State under this subsection.

(c) Any State or combination of States that receives a grant under subsection (b) shall, within eighteen months after the date of receipt of a Federal grant under subsection (b) and biennially thereafter, report in conjunction with the Administrator to the Congress on progress made in implementing the interstate management plan developed pursuant to the Chesapeake Bay Program.

(d) There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purposes of this section:

(1) $3,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1988, to carry out subsection (a); and

(2) $10,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1988, to carry out subsection (b).

GREAT LAKES

SEC. 118. (a) DEFINITIONS.—For the purposes of this section, the term—

(1) "Agency" means the Environmental Protection Agency;

(2) "Great Lakes" means Lake Ontario, Lake Erie, Lake Huron (including Lake St. Clair), Lake Michigan, and Lake Superior, and the connecting channels (Saint Mary's River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian Border);

(3) "Great Lakes System" means all the streams, rivers, lakes, and other bodies of water within the drainage basin of the Great Lakes:

(4) "Program Office" means the Great Lakes National Program Office established by this section.

(b) GREAT LAKES NATIONAL PROGRAM OFFICE.—The Great Lakes National Program Office (previously established by the Administrator) is hereby established within the Agency. The Program Office shall be headed by a Director who, by reason of management experience and technical expertise relating to the Great Lakes, is highly qualified to direct the development of programs and plans on a variety of Great Lakes issues. The Great Lakes National Program Office shall be located in a Great Lakes State.

(c) GREAT LAKES MANAGEMENT.— The Program Office shall—

(A) in cooperation with appropriation Federal, State, tribal, and international agencies, develop and implement specific action plans to carry out the responsibilities of the United States under the Great Lake Water Quality Agreement of 1978;

(B) establish a Great Lakes system-wide surveillance network to monitor the water quality of the Great Lakes, with specific emphasis on the monitoring of toxic pollutants; and

(C) serve as the liaison with, and provide information to, the Canadian members of the International Joint Commission and the Canadian counterpart to the Agency.

(2) The Program Office shall develop, in consultation with the states, a five-year plan and program for reducing the amount of nutrients introduced into the Great Lakes. Such program shall incorporate any management program for reducing nutrient runoff from nonpoint sources established under section 319 of this Act and shall include a program for monitoring nutrient runoff into, and ambient levels in, the Great Lakes.

(3) The Program Office shall carry out a five year study and demonstration projects relating to the control and removal of toxic pollutants in the Great Lakes, with emphasis on the removal of toxic pollutants from bottom sediments.

(4) To the extent practicable, the Agency's annual budget submission to Congress, shall include a funding request for the Program Office as a separate budget line item.

(5) Within ninety days after the end of each fiscal year, the Administrator shall submit to the Congress a comprehensive report which——

(A) describes the achievements in the preceding fiscal year in implementing such agreement and shows by categories (including judicial enforcement, research, State cooperative efforts, and general administration) initiatives in such preceding fiscal year;

(B) describes the progress made in such preceding fiscal year in implementing the system of surveillance of the water quality in the Great Lakes, with particular reference to toxic pollutants;

(C) describes the long-term prospects for improving the condition of the Great Lakes; and

(D) provides a comprehensive assessment of the planned efforts to be pursued in the succeeding fiscal year for implementing the Great Lakes Water Quality Agreement of 1978. The assessment shall show by categories the amount anticipated to be expended on Great Lakes water quality initiatives in the fiscal year to which the assessment relates. The assessment shall also include a report of current programs administered by other Federal agencies which make available resources to the Great Lakes management efforts.

(d) INTERAGENCY COOPERATION.—The head of each department, agency, or other instrumentality of the Federal Government which is engaged in, is concerned with, or has authority over programs relating to research, monitoring, and planning to maintain, enhance, preserve, or rehabilitate the environmental quality and natural resources of the Great Lakes, including the Chief of Engineers of the Army, the Chief of the Soil Conservation Service, the Commandant of the Coast Guard, the Director of the Fish amd Wildlife Service, and the Administrator of the National Oceanic and Atmospheric Administration shall submit an annual report to the Administrator with respect to the activities of that agency or office affecting compliance with the Great Lakes Water Quality Agreement of 1978.

(e) RELATIONSHIP TO EXISTING FEDERAL AND STATE LAWS AND INTERNATIONAL TREATIES.—Nothing contained in this section shall be construed to affect the jurisdiction, powers, or prerogatives of any

department, agency, or officer of the Federal Government or of any State government, or of any tribe, nor any powers, jurisdiction, or prerogatives of international bodies created by treaty with authority relating to the Great Lakes.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the Great Lakes National Program Office for the purposes of carrying out this section not to exceed $10,000,000 per fiscal year for the fiscal years 1986, 1987, 1988, 1989, and 1990. Of such amounts——

(1) $700,000 in each fiscal year shall be used for the program of nutrient monitoring; and

(2) $5,000,000 in each fiscal year shall be used for demonstration projects of the feasibility of controlling and removing toxic pollutants.

TITLE II—GRANTS FOR CONSTRUCTION OF TREATMENT WORKS

* * * * * * *

FEDERAL SHARE

SEC. 202. (a)(1) The amount of any grant for treatment works made under this Act from funds authorized for any fiscal year begining after June 30, 1971 and ending before October 1, 1984, shall be 75 per centum of the cost of construction thereof (as approved by the Administrator), and for any fiscal year beginning on or after October 1, 1984, shall be 55 per centum of the cost of construction thereof (as approved by the Administrator) unless modified to a lower percentage rate uniform throughout a State by the Governor of that State with the concurrence of the Administrator. Within ninety days after the enactment of this sentence the Administrator shall issue guidelines for concurrence in any such modification, which shall provide for the consideration of the unobligated balance of sums allocated to the State under section 205 of this Act, the need for assistance under this title in such State, and the availability of State grant assistance to replace the Federal share reduced by such modification. The payment of any such reduced Federal share shall not constitute an obligation on the part of the United States or a claim on the part of any State or grantee to reimbursement for the portion of the Federal share reduced in any such State. Any grant (other than for reimbursement) made prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 from any funds authorized for any fiscal year beginning after June 30, 1971, shall, upon the request of the applicant, be increased to the applicable percentage under this section. Notwithstanding the first sentence of this paragraph, in any case where a primary, secondary, or advanced waste treatment facility or its related interceptors or a project for inflitration-in-flow correction has received a grant for erection, building, acquisition, alteration, remodeling, improvement, extension, or correction before October 1, 1984, all segments and phases of such facility, interceptors and project for infiltration-in-flow correction shall be eligible for grants at 75 per centum of the cost of construction thereof**[.]**, *for any such grants made before October 1, 1990.*

PLANS, SPECIFICATIONS, ESTIMATES, AND PAYMENTS

SEC. 203. (a) * * *

* * * * * * *

(f)(1) An applicant from a State allowing use of this subsection who proposes to construct waste water treatment works may enter into an agreement with the Administrator under this subsection providing for the preparation of construction plans and specifications and the erection of such treatment works, in lieu of proceeding under the other provisions of this section.

(2) Agreements under this subsection shall be limited to projects which are, under an approved facility plan.

(A) treatment works that have an estimated total cost of $8,000,000 or less; and

(B) any of the following types of waste water treatment systems: aerated lagoons, trickling filters, stabilization ponds, land application systems, sand filters, and subsurface disposal systems.

(3) An agreement entered into under this subsection shall—

(A) set forth an amount agreed to as the maximum Federal contribution to the project, based upon a competitively bid document of basic design data and applicable standard construction specifications and a determination of the federally eligible costs of the project at the applicable Federal share under section 202 of this Act;

(B) set forth dates for the start and completion of construction of the treatment works by the applicant and a schedule of payments of the Fedeal contribution to the project;

(C) contain assurances by the applicant that (i) engineering and management assistance will be provided to manage the project; (ii) the proposed treatment works will be an operable unit and will meet all the requirements of this title; and (iii) not later than one year after the date specified as the date of completion of construction of the treatment works, the treatment works will be operating so as to meet the requirements of any applicable permit for such treatment works under section 402 of this Act;

(D) require the applicant to obtain a bond from the contractor in an amount determined necessary by the Administrator to protect the Federal interest in the project; and

(E) contain such other terms and conditions as are necessary to assure compliance with this title (except as provided in paragraph (4) of this subsection).

(4) Subsections (a), (b), and (c) of this section shall not apply to grants made pursuant to this subsection.

(5) The Administrator shall reserve a portion of the grant to assure contract compliance until final project approval as defined by the Administrator. If the amount agreed to under paragraph (3)(A) exceeds the cost of designing and constructing the treatment works, the Administrator shall reallot the amount of the excess to the State in which such treatment works are located for the fiscal year in which such audit is completed.

(6) Not more than 25 percent of the amount allotted to a State for any fiscal year under section 205 of this Act shall be obligated for grants pursuant to this subsection.

(7) The Administrator will determine an allowance for facilities planning for projects constructed under this subsection in accordance with section 201(l).

(8) In any case in which the recipient of a grant made pursuant to this subsection does not comply with the terms of the agreement entered into under paragraph (3), the Administrator is authorized to take such action as may be necessary to recover the appropriate amount of the Federal contribution to the project.

(9) A recipient of a grant made pursuant to this subsection shall not be eligible for any other grants under this title.

LIMITATIONS AND CONDITIONS

SEC. 204. (a) * * *

* * * * * * *

(c) The next to the last sentence of paragraph (5) of subsection (a) of this section shall not apply in any case where a primary, secondary, or advanced waste treatment facility or its related interceptors has received a grant for erection, building, acquisition, alteration, remodeling, improvement, or extension before October 1, 1984, and all segments and phases of such facility and interceptors *awarded a grant before October 1, 1990,* shall be funded based on a 20-year reserve capacity in the case of such facility and a 20-year reserve capacity in the case of such interceptors, except that, if a grant for such interceptors has been approved prior to the date of enactment of the Municipal Wastewater Treatment Construction Grant Amendments of 1981, such interceptors shall be funded based on the approved reserve capacity not to exceed 40 years.

ALLOTMENT

SEC. 205. (a) * * *

* * * * * * *

(c)(1) * * *

* * * * * * *

(3) Sums authorized to be appropriated pursuant to section 207 for the fiscal year 1986, 1987, 1988, 1989, and 1990 shall be allotted for each such year by the Administrator not later than the tenth day which begins after the date of enactment of the Clean Water Act Amendments of 1985. Sums authorized for such fiscal years shall be allotted in accordance with the following table:

States:	
Alabama	*0.012500*
Alaska	*.007563*
Arizona	*.012500*
Arkansas	*.011714*
California	*.058321*
Colorado	*.010503*
Connecticut	*.012500*
Delaware	*.055801*
District of Columbia	*.009172*
Florida	*.045181*

Georgia	*.014570*
Hawaii	*.007440*
Idaho	*.007272*
Illinois	*.036881*
Indiana	*.019653*
Iowa	*.012672*
Kansas	*.012337*
Kentucky	*.015044*
Louisiana	*.014380*
Maine	*.009772*
Maryland	*.019722*
Massachusetts	*.036195*
Michigan	*.035063*
Minnesota	*.014988*
Mississippi	*.012500*
Missouri	*.025422*
Montana	*.005411*
Nebraska	*.007467*
Nevada	*.006805*
New Hampshire	*.012500*
New Jersey	*.048867*
New Mexico	*.006814*
New York	*.090478*
North Carolina	*.016168*
North Dakota	*.004658*
Ohio	*.045906*
Oklahoma	*.012223*
Oregon	*.011794*
Pennsylvania	*.032302*
Rhode Island	*.007428*
South Carolina	*.013399*
South Dakota	*.006400*
Tennessee	*.016674*
Texas	*.053882*
Utah	*.012486*
Vermont	*.006581*
Virginia	*.016689*
Washington	*.028665*
West Virginia	*.012712*
Wisconsin	*.022322*
Wyoming	*.005359*
Samoa	*.000732*
Guam	*.000567*
Northern Marianas	*.000533*
Puerto Rico	*.012640*
Pacific Trust Territories	*.001409*
Virgin Islands	*.000464*

* * * * * * *

(e) For the fiscal years 1978 **[**, 1979, 1980, 1981, 1982, 1983, 1984, and 1985,**]** *through 1994,* no State shall receive less than one-half of 1 per centum of the total allotment under subsection (c) of this section, except that in the case of Guam, Virgin Islands, American Samoa, and the Trust Territories not more than thirty-three one-hundredths of 1 per centum in the aggregate shall be allotted to all four of these jurisdictions. For the purpose of carrying out this subsection there are authorized to be appropriated, subject to such amounts as are provided in appropriation Acts, not to exceed $75,000,000 for each of fiscal years 1978 **[**, 1979, 1980, 1981, 1982, 1983, 1984, and 1985.**]** *through 1984.* If for any fiscal year the amount appropriated under authority of this subsection is less than the amount necessary to carry out this subsection the amount each State receives under this subsection for such year shall bear the same ratio to the amount such State would have received under this subsection in such year if the amount necessary to carry it out had

been appropriated as the amount appropriated for such year bears to the amount necessary to carry out this subsection for such year.

* * * * * * *

(g)(1) The Administrator is authorized to reserve each fiscal year not to exceed 2 per centum of the amount authorized under section 207 of this title for purposes of the allotment made to each State under this section on or after October 1, 1977, except in the case of any fiscal year beginning on or after October 1, 1981, and ending before [October 1, 1985.] *October 1, 1994,* in which case the percentage authorized to be reserved shall not exceed 4 per centum, or $400,000, whichever amount is the greater. Sums so reserved shall be available for making grants to such State under paragraph (2) of this subsection for the same period as sums are available from such allotment under subsection (d) of this section, and any such grant shall be available for obligation only during such period. Any grant made from sums reserved under this subsection which has not been obligated by the end of the period for which available shall be added to the amount last allotted to such State under this section and shall be immediately available for obligation in the same manner and to the same extent as such last allotment. Sums authorized to be reserved by this paragraph shall be in addition to and not in lieu of any other funds which may be authorized to carry out this subsection.

* * * * * * *

[(i) Not less than one-half of one per centum of funds allotted to a State for each of the fiscal years ending September 30, 1979, September 30, 1980, September 30, 1981, September 30, 1982, September 30, 1983, September 30, 1984, and September 30, 1985, under subsection (a) of this section shall be expended only for increasing the Federal share of grants for construction of treatment works utilizing innovative processes and techniques from 75 per centum to 85 per centum pursuant to section 202(a)(2) of this Act. Including the expenditures authorized by the preceding sentence, a total of 2 per centum of the funds allotted to a State for each of the fiscal years ending September 30, 1979, and September 30, 1980, and 3 per centum of the funds allotted to a State for the fiscal year ending September 30, 1981, under subsection (a) of this section shall be expended only for increasing grants for construction of treatment works pursuant to section 202(a)(2) of this Act. Including the expenditures authorized by the first sentence of this subsection, a total (as determined by the Governor of the State) of not less than 4 per centum nor more than 7½ per centum of the funds allotted to such State for any fiscal year beginning after September 30, 1981, under subsection (c) of this section shall be expended only for increasing the Federal share of grants for construction of treatment works pursuant to section 202(a)(2) of this Act.]

(i) Not less than one-half of 1 per centum of funds allotted to a State for each of the fiscal years ending September 30, 1979 through September 30, 1990, under subsection (c) of this section shall be expended only for increasing the Federal share of grants for construction of treatment works utilizing innovative processes and techniques pursuant to section 202(a)(2) of this Act. Including the ex-

penditures authorized by the preceding sentence, a total of 2 per centum of the funds allotted to a State for each of the fiscal years ending September 30, 1979, and September 30, 1980, and 3 per centum of the funds allotted to a State for the fiscal year ending September 30, 1981, under subsection (c) of this section shall be expended only for increasing grants for construction of treatment works pursuant to section 202(a)(2) of this Act. Including the expenditures authorized by the first sentence of this subsection, a total (as determined by the Governor of the State) of not less than 4 per centum nor more than 7½ per centum of the funds allotted to such State under subsection (c) of this section for each of the fiscal years ending September 30, 1982, through September 30, 1990, shall be expended only for increasing the Federal share of grants for construction of treatment works pursuant to section 202(a)(2) of this Act.

(j)(1) * * *

* * * * * * *

(5) In addition to the sums reserved under paragraph (1), the Administrator shall reserve each fiscal year for each State 1 per centum of the sums allotted and available for obligation to such State under this section for each fiscal year beginning on or after October 1, 1986, or $100,000, whichever is greater, for the purpose of carrying out section 319 of this Act. Sums so reserved in a State in any fiscal year for which such State does not request the use of such sums, to the extent such sums exceed $100,000, may be used by such State for other purposes under this title.

* * * * * * *

(l) The Administrator shall reserve each fiscal year beginning after September 30, 1985, 1½ per centum of the sums appropriated under section 207, prior to allotment among the States under subsection (c) of this section. Of the sums reserved under this subsection, two-thirds shall be available to address water quality problems of marine bays and estuaries subject to lower levels of water quality due to the impacts of discharges from combined storm water and sanitary sewer overflows from adjacent urban complexes, and one-third shall be available for the implementation of section 320 of this Act. Sums so reserved shall be subject to the period of availability for obligation established under subsection (d) of this section.

(m)(1) The Administrator is authorized to award from funds available for obligation during each fiscal year ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, September 30, 1990, September 30, 1991, September 30, 1992, September 30, 1993, and September 30, 1994, a capitalization grant to a State for the purpose of capitalizing a Water Pollution Control Revolving Fund established in compliance with title VI of this Act, where the Governor requests such action in accordance with paragraph (2) of this subsection.

(2) No later than thirty days after the date of enactment of this Act with respect to funds available for obligation in the fiscal year beginning October 1, 1985, and not less than ninety days prior to the start of each of the fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994, a State shall provide notice of its intent to use all or a portion of the funds available for obligation in that fiscal year

as a capitalization grant for a Water Pollution Control Revolving Fund under title VI of this Act.

(3) Any sum made available to a State's Water Pollution Control Revolving Fund under this subsection shall be in addition to any funds otherwise allotted to that State under section 601(b) during any fiscal year.

* * * * * * *

AUTHORIZATION

Sec. 207. There is authorized to be appropriated to carry out this time, other than section 206(e), 208 and 209, for the fiscal year ending June 30, 1973, not to exceed $5,000,000,000, for the fiscal year ending June 30, 1974, not to exceed $6,000,000,000, and for the fiscal year ending June 30, 1975, not to exceed $7,000,000,000, and, subject to such amounts as are provided in appropriation Acts for the fiscal year ending September 30, 1977, $1,000,000,000 for the fiscal year ending September 30, 1978, $4,500,000,000 and for the fiscal years ending September 30, 1979, September 30, 1980, not to exceed $5,000,000,000; for the fiscal year ending September 30, 1981, not to exceed $2,548,837,000; and for the fiscal years ending September 30, 1982, September 30, 1983, September 30, 1984, and September 30, 1985, not to exceed $2,400,000,000 per fiscal year**[.]***; and to carry out this title, other than sections 206(e), 208, and 209, subject to such amounts as are provided in appropriation Acts, for each of the fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1988, not to exceed $2,400,000,000; and for each of the fiscal years ending September 30, 1989, and September 30, 1990, not to exceed $1,200,000,000.*

* * * * * * *

INDIAN TRIBES

Sec. 220. (a) The Administrator, in cooperation with the Director of the Indian Health Service, shall assess the need for sewage treatment works to serve Indian tribes, the degree to which such needs will be met through funds allotted to States under section 205 of this Act and priority lists in accordance with section 216 of this Act, and any obstacles which prevent such needs from being met. The Administrator shall submit a report to the Congress for such assessment no later than one year after the enactment of the Clean Water Act Amendments of 1985.

(b) Beginning with fiscal year 1987, the Administrrator is authorized to reserve each fiscal year up to one-half of one per centum of the sums appropriated under section 207, prior to allotment among the States under section 205(e), based on the determination of unmet needs reported under subsection (a). Sums reserved under this subsection shall be available for grants to provide sewage treatment works to serve Indian tribes.

(c) The Administrator is authorized to make special provision for the treatment of Indian tribes under this title, including the treatment of Indian tribes as States to the degree necessary to carry out the purposes of this section. Such special provision may include the direct provision of funds reserved under subsection (b) to the govern-

ing bodies of Indian tribes, and the determination of priorities by Indian tribes, where not determined by the Administrator in cooperation with the Director of the Indian Health Service. The Administrator is authorized to reduce the non-Federal share otherwise required under section 202 with respect to Indian tribes, as determined by the Administrator in cooperation with the Director of the Indian Health Service.

TITLE III—STANDARDS AND ENFORCEMENT

EFFLUENT LIMITATIONS

SEC. 301. (a) * * *
(b)(1) * * *

* * * * * * *

(2)(A) * * *

* * * * * * *

(C) [not later than July 1, 1984,] with respect to all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph *as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than July 1, 1988*;

* * * * * * *

(E) [not later than July 1, 1984,] *as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than July 1, 1988, compliance with* effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which in the case of pollutants identified pursuant to section 304(a)(4) of this Act shall require application of the best conventional pollutant control technology as determined in accordance with regulations issued by the Administrator pursuant to section 304(b)(4) of this Act; and

(F) for all pollutants (other than those subject to subparagraphs (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph [not] *as expeditiously as possible but in no case* later than 3 years after the date such limitations are established [or not later than July 1, 1984, whichever is later, but in no case later than July 1, 1987.] *and in no case later than July 1, 1988.*

(3)(A) for effluent limitations under paragraph (1)(A)(i) of this subsection promulgated after January 1, 1982, and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for such industrial category issued before such date, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than July 1, 1988; and

(B) for any effluent limitation in accordance with paragraph (1)(A)(i), (2)(A)(i), or (2)(E) of this subsection established only on the

basis of section 402(a)(1) in a permit issued after enactment of the Clean Water Act Amendments of 1985, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established, and in no case later than July 1, 1988.

* * * * * * *

(g)(1) [The Administrator, with the concurrence of the State, shall modify the requirements of subsection (b)(2)(A) of this section with respect to the discharge of any pollutant (other than pollutants identified pursuant to section 304(a)(4) of this Act, toxic pollutants subject to section 307(a) of this Act, and the thermal component of discharges) from any point source.] *The Administrator, with the concurrence of the State, may modify the requirements of subsection (b)(2)(A) of this section with respect to the discharge from any point source of ammonia, chlorine, color, iron, or total phenols (4AAP) (when determined by the Administrator to be a nonconventional pollutant under this Act)* upon a showing by the owner or operator of such point source satisfactory to the Administrator that—

(A) Such modified requirements will result at a minimum in compliance with the requirements of subsection (b)(1)(A) or (C) of this section, whichever is applicable;

(B) such modified requirements will not result in any additional requirements on any other point or nonpoint source; and

(C) such modification will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water and such modification will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health of the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic propensities.

(2) If an owner or operator of a point source applies for a modification under this subsection with respect to the discharge of any pollutant, such owner or operator shall be eligible to apply for modification under subsection (c) of this section with respect to such pollutant only during the same time-period as he is eligible to apply for a modification under this subsection.

(3) The Administrator may evaluate pollutants subject to this subsection prior to the enactment of the Clean Water Act Amendments of 1985, and if the Administrator determines that for one or more pollutants satisfactory test methods and data are available to make the determination required by paragraph (1), may recommend to the Congress the inclusion of such pollutants under this subsection.

(4) Any request for a modification under this subsection shall be deemed to have been denied, if not approved by final agency action within one year after submission to the Administrator.

(5) The amendment made to this subsection by the Clean Water Act Amendments of 1985 shall apply to all modification requests under this subsection pending on the date of enactment of the Clean

Water Act Amendments of 1985. Such amendment to this subsection shall not have the effect of extending or reopening the deadline established in section 301(j)(1)(B).

(h) The Administrator, with the concurrence of the State, may issue a permit under section 402 which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that—

(1) there is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 304(a)(6) of this Act;

(2) such modified requirements will not interfere with the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, and allows recreational activities, in and on the water;

(3) the applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable;

(4) such modified requirements will not result in any additional requirements on any other point or nonprofit source;

[(5) all applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;**]**

(5) sources introducing waste into such treatment works are in compliance with all applicable pretreatment requirements and the applicant has assured continued compliance with such requirements and, in the case of any treatment works serving a population of five thousand or more, the applicant has adopted and is enforcing a program to control the entrance of toxic pollutants from industrial sources into such treatment works, comparable to that required by section 402(b)(8);

(6) to the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into such treatment works;

(7) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit**[**.**]***;*

(8) the applicant at the time such modification becomes effective will be discharging effluent which has received at least primary or equivalent treatment. Such marine waters must exhibit characteristics assuring that water providing dilution does not contain significant amounts of previously discharged effluent from such treatment works. For the purposes of this paragraph, "primary or equivalent treatment" means treatment by screening, sedimentation, and skimming adequate to remove at least 30 per centum of the biological oxygen demanding materal and of the suspended solids in the treatment works influent, and disinfection, where appropriate. No permit issued under this subsection shall authorize the discharge of any pollutant into saline estuarine waters which at the time of application do not

support a balanced indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish, fish and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed discharge.

For the purposes of this subsection the phrase "the discharge of any pollutant into marine waters" refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this subsection, and section 101(a)(2) of this Act. A municipality which applies secondary treatment shall be eligible to receive a permit pursuant to this subsection which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from any treatment works owned by such municipality into marine waters. No permit issued under this subsection shall authorize the discharge of sewage sludge into marine waters.

* * * * * * *

(j)(1) Any application filed under this section for a modification of the provisions of—

(A) subsection (b)(1)(B) under subsection (h) of this section shall be filed not late than the 356th day which begins after the date of enactment of the Municipal Wastewater Treatment Construction Grant Amendments of 1981 *except that a publicly owned treatment works which prior to December 31, 1982, had a contractural arrangement to use a portion of the capacity of an ocean outfall operated by another publicly owned treatment works which has applied for or received a modification under subsection (h) of this section may apply for a modification under subsection (h) in its own right not later than thirty days after the enactment of the Clean Water Act Amendments of 1985;*

(B) subsection (b)((2)(A) as it applies to pollutants identified in subsection (b)(2(F) shall be filed not later than 270 days after the date of promulgation of an applicable effluent guideline under section 304 or not late than 270 days after the date of enactment of the Clean Water Act of 1977, whichever is later.

(2) Any application for a modification filed under subsection (g) of this section shall not operate to stay any requirement under this Act, unless in the judgment of the Administrator such a stay or the modification sought will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic propensities, and that there is a substantial likeli-

hood that the applicant will succeed on the merits of such application. *An application for a modification under subsection (g) shall not stay the applicant's obligation to comply with effluent limitations for all pollutants not the subject of an application for modification, and nothing in this section shall preclude the Administrator (or State as appropriate) from issuing a permit containing effluent limitations for all pollutants not subject to a stay under this subsection pending a final decision on the request for a modification.* In the case of an application filed under subsection (g) of this section, the Administrator may condition any stay granted under this paragraph on requiring the filing of a bond or other appropriate security to assure timely compliance with the requirements from which a modification is sought.

* * * * * * *

(1) [The] *Other than as provided in subsection (n) of this subsection, the* Administrator may not modify any requirement of this section as it applies to any specific pollutant which is on the toxic pollutant list under section 307(a)(1) of this Act.

* * * * * * *

(n)(1) The Administrator, with the concurrence of the State, may establish an alternative requirement under subsection (b)(2) or section 307(b) for a facility that modifies the requirements of national effluent limitation guidelines or categorical pretreatment standards that would otherwise be applicable to such facility, if the owner or operator of such facility demonstrates to the satisfaction of the Administrator that—

(A) the facility is fundamentally different with respect to the factors (other than cost) specified in section 304 (b) or (g) and considered by the Administrator in establishing such national effluent limitation guidelines or categorical pretreatment standards;

(B) the application is based solely on information and supporting data submitted to the Administrator during the rulemaking for establishment of the applicable national effluent limitation guidelines or categorical pretreatment standard specifically raising the factors that are fundamentally different for such facility;

(C) the alternative requirement is no less stringent than justified by the fundamental difference; and

(D) the alternative requirement will not result in a non-water quality environemntal impact which is markedly more adverse than the impact considered by the Administrator in establishing such national effluent limitation guideline or categorical pretreatment standard.

(2)(A) an application for an alternative requirement under this subsection shall be submitted to the Administrator not later than one hundred twenty days after the publication of the final effluent limitation guideline or categorical pretreatment standard in the Federal Register. The Administrator shall deny any application that is not compete, without providing an opportunity for reapplication.

(B) an application for an alternative requirement under this subsection shall be deemed to have been denied, if not approved by final agency action within two hundred forty days after submission to the Administrator.

(C) For the purposes of this subsection, an application for an alternative requirement based on fundamentally different factor which is pending on the date of enactment of the Clean Water Act Amendments of 1985 shall be deemed to have been submitted to the Administrator thirty days after such date of enactment.

(3) an application for an altenative requirement under this subsection shall not stay the applicant's obligation to comply with the effluent limitation guideline or categorical pretreatment standard which is the subject of the application.

(4) The authority of this subsection shall apply only to those primary industrial categories identified in the permit regulations issued under section 402 as of the date of enactment of the Clean Water Act Amendments of 1985.

(o) The Administrator shall prescribe and collect from each applicant fees reflecting the reasonable administative costs incurred in reviewing and processing applications for modifications submitted to the Administrator pursuant to section 301 (c), (g), (h), (i), (m), and (n), section 304(d)(4), and section 316(a) of this Act. All amounts collected by the Administrator under this subsection shall be deposited into miscellaneous receipts of the Treasury.

WATER QUALITY RELATED EFFLUENT LIMITATIONS

SEC. 302. (a) Whenever, in the judgment of the Administrator, *or as identified under section 305(c),* discharges of pollutants from a point source or group of point sources, with the application of effluent limitations required under section 301(b)(2) of this Act, would interfere with the attainment or maintenance of that water quality in a specific portion of the navigable waters which shall assure protection of public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water, effluent limitations (including alternative effluent control strategies) for such point source or sources shall be established which can reasonably be expected to contribute to the attainment or maintenance of such water quality.

[(b)(1) Prior to establishment of any effluent limitation pursuant to subsection (a) of this section, the Administrator shall issue notice of intent to establish such limitation and within ninety days of such notice hold a public hearing to determine the relationship of the economic and social costs of achieving any such limitation or limitations, including any economic or social dislocation in the affected community or communities, to the social and economic benefits to be obtained (including the attainment of the objective of this Act) and to determine whether or not such effluent limitations can be implemented with available technology or other alternative control strategies.

[(2) If a person affected by such limitation demonstrates at such hearing that (whether or not such technology or other alternative control strategies are available) there is no reasonable relationship between the economic and social costs and the benefits to be obtained (including attainment of the objective of this Act), such limitation shall not become effective and the Administrator shall adjust such limitation as it applies to such person.**]**

(b)(1) Prior to establishment of any effluent limitation pursuant to subsection (a) of this section, the Administrator shall publish such proposed limitation and within ninety days of such publication hold a public hearing.

(2)(A) The Administrator, with the concurrence of the State, may issue a permit which modifies the effluent limitations required by subsection (a) of this section for pollutants other than toxic pollutants, if the applicant demonstrates at such hearing that (whether or not technology or other alternative control strategies are available) there is no reasonable relationship between the economic and social costs and the benefits to be obtained (including attainment of the objective of this Act) from achieving such limitation.

(B) The Administrator, with the concurrence of the State, may issue a permit which modifies the effluent limitations required by subsection (a) of this section for toxic pollutants for a single period not to exceed five years, if the applicant demonstrates to the satisfaction of the Administrator that such modified requirements (1) will represent the maximum degree of control within the economic capability of the owner and operator of the source, and (2) will result in reasonable further progress beyond the requirements of section 301(b)(2) toward the requirements of subsection (a) of this section.

(c) The establishment of effluent limitations under this section shall not operate to delay the application of any effluent limitation established under section 301 of this Act.

WATER QUALITY STANDARDS AND IMPLEMENTATION PLANS

SEC. 303. (a)(1) * * *

* * * * * * *

(c)(1) * * *

(2)*(A)* Whenever the State revises or adopts a new standard, such revised or new standard shall be submitted to the Administator. Such revised or new wa[illegible]ality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses. Such standards shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this Act. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation.

(B) Whenever a State reviews water quality standards pursuant to paragraph (1) of this subsection, or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria for all toxic pollutants listed pursuant to section 307(a)(1) of this Act, the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses. Such criteria

shall be specific numerical criteria for such toxic pollutants and in addition may include criteria based on biological monitoring or assessment methods consistent with information published pursuant to section 304(a)(8). Particular attention shall be given to toxic pollutants which are highly persistent in the environment, bioaccumulative, or known or suspected carcinogens, mutagens, or teratogens. Nothing in this section shall be construed to limit or delay the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods or preveiously adopted numerical criteria.

* * * * * * *

(d)(1) * * *

* * * * * * *

(4) Not later than two years after the submittal of the identification required by section 305(c)(1) of this Act, each State shall establish effluent limitations for point sources discharging into each portion of the navigable waters identified under section 305(c)(1)(A) as necessary to attain applicable water quality standards, taking into account any substantial nonpoint source contributions of toxic pollutants and existing or planned controls on all sources. Such effluent limitations shall be incorporated into permits under section 402 of this Act, which shall provide for compliance as expeditiously as practicable, but in no event later than three years after the establishment of such effluent limitation.

(5)(A) For waters identified in paragraph (1)(A) where the applicable water quality standard has not yet been attained, any effluent limitation based on a total maximum daily load or other waste load allocation established under this section may be revised only if (i) the cumulative effect of all such revised effluent limitations based on such total maximum daily load or waste load allocation will assure the attainment of such water quality standard, or (ii) the designated use which is not being attained is removed in accordance with regulations established under this section.

(B) For water identified in paragraph (1)(A) where the quality of such waters equals or exceeds levels necessary to protect the designated use for such waters, any effluent limitation based on a total maximum daily load or other waste load allocation established under this section, or other permitting standard, may be revised only if such revision is subject to and consistent with the antidegradation policy established under this section.

* * * * * * *

SEC. 304. (a)(1) * * *

* * * * * * *

(7) The Administrator, after consultation with appropriate State agencies and on the basis of criteria and information published under paragraphs (1) and (2) of this subsection, shall develop and publish, within nine months after the date of enactment of the Clean Water Act Amendments of 1985, guidance to the States on performing the identification required by section 305(c)(1) of this Act.

(8) The Administrator, after consultation with appropriate State agencies and within two years after the date of enactment of the Clean Water Act Amendments of 1985, shall develop and publish information on methods for establishing and measuring water quality criteria for toxic pollutants on other bases than pollutant-by-pollutant criteria, including biological monitoring and assessment methods.

* * * * * * *

(k)(1) The Administrator shall enter into agreements with the Secretary of Agriculture, the Secretary of the Army, and the Secretary of the Interior, and the heads of such other departments, agencies, and instrumentalities of the United States as the Administrator determines, to provide for the maximum utilization of other Federal laws and programs for the purpose of achieving and maintaining water quality through appropriate implementation of plans approved under section 208 of this Act *and nonpoint source pollution management programs approved under section 319 of this Act.*

* * * * * * *

(l) Within twelve months of the date of enactment of the Clean Water Act Amendments of 1985, and biennially thereafter, the Administrator shall publish in the Federal Register a plan which shall:

(A) establish a schedule for the annual review and revision of promulgated effluent guidelines, in accordance with subsection (b) of this section;

(B) identify categories of sources discharging toxic or nonconventional pollutants for which guidelines under subsection (b)(2) of this section and section 306 have not previously been published; and

(C) establish a schedule for promulgation of effluent guidelines for categories identified in subparagraph (B), under which promulgation of such guidelines shall be no later than four years after the date of enactment for categories identified in the first published plan or three years after the publication of the plan for categories identified in later published plans.

(2) The Administrator shall provide for public review and comment on the plan prior to final publications.

WATER QUALITY INVENTORY

SEC. 305. (a) * * *

* * * * * * *

(c) Each State shall prepare and submit to the Adminstrator and the Congress within two years after the enactment of the Clean Water Act Amendments of 1985, nad revise biennially thereafter, an identification of—

(1) those waters within or adjacent to such State which after the application of effluent limitation required under section 301(b)(2) of this Act cannot reasonably be anticipated to attain or maintain (A) water quality standards for such waters reviewed, revised or adopted in accordance with section

303(c)(2)(B) of this Act, due to toxic pollutants, or (B) that water quality which shall assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water; and

((2) those waters within or adjacent to such State which are public water supplies or otherwise important to public health protection, or which have a high quality use designation, and which because of such use and current or potential pollution are of high priority to such State.

In the case of any State which fails to submit the identification required by paragraph (1), or which submits an incomplete identification, the Administrator shall promptly prepare an identification in accordance with paragraph (1)

* * * * * * *

INSPECTIONS, MONITORING, AND ENTRY

SEC. 308. (a) Whenever required to carry out the objective of this Act, including but not limited to (1) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under this Act; (2) determining whether any person is in violation of any such effluent limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; (3) any requirement established under this section; or (4) carrying out section 305; 311, 402, 404 (relating to State permit programs), *405* and 504 of this Act—

(A) the Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (v) provide such other information as he may reasonably require; and

(B) the Administrator or his authorized representative, upon presentation of his credentials—

(i) shall have a right of entry to, upon, or through any premises in which an effluent source is located in or which any records required to be maintained under clause (A) of this subsection are located, and

(ii) may at reasonable times have access to any copy any records, inspect any monitoring equipment or method required under clause (A), and sample any effluents which the owner or operator of such sources is required to sample under such clause.

* * * * * * *

FEDERAL ENFORCEMENT

Sec. 309. (a)(1) * * *

* * * * * * *

[(c)(1) Any person who willfully or negligently violates section 301, 302, 306, 307, or 308 of this Act, or any permit condition or limitation implementing any of such actions in a permit issued under section 402 of this Act by the Administrator or by a State, or in a permit issued under section 404 of this Act by a State shall be published by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

[(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

[(3) For the purposes of this subsection, the term "person" shall mean, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.]

(c)(1) Any person who (A) negligently violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(a)(3) and (b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, or who (B) negligently introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage, or, other than in compliance with all applicable Federal, State, or local requirements or permits, causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State, shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both.

(2) Any person who (A) knowingly violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, or who (B) knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such

person knew or reasonably should have known could cause personal injury or property damage, or, other then in compliance with all applicable Federal, State, or local requirements or permits, causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State, shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than three years, or by both.

(3)(A) Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than fifteen years, or both. A defendant that is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than $1,000,000.

(B) for the purpose of subparagraph (A) of this paragraph—

(i) In determining whether a defendant who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury—

(I) the person is responsible only for actual awareness or actual belief that he possessed; and

(II) knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant:

Provided, That in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information.

(ii) It is an affirmative defense to prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

(I) an occupation, a business, or a profession; or

(II) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent. The defendant may establish an affirmative defense under this subparagraph by a preponderance of the evidence.

(iii) The term "organization" means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(iv) The term "serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(4) Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or by both.

(5) If a conviction is for a violation of paragraph (1), (2), (3), or (4) of this subsection committed after a first conviction of such person under the same paragraph, the maximum punishment under the respective paragraph shall be doubled with respect to both fine and imprisonment.

(6) For the purpose of paragraphs (1), (2), (3), and (4) the term "person" shall mean, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.

(7) For the purpose of paragraphs (1) and (2), the term "hazardous substance" shall mean (A) any substance designated pursuant to section 311(b)(2)(A) of this Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of this Act, and (E) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.

(d) Any person who violates section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator, or by a State, or in a permit issued under section 404 of this Act by a State, *or any requirement imposed in a pretreatment program approved under section 402(a)(13) and (b)(8) of this Act,* and any person who violates any order issued by the Administrator under subsection (a) of this section, shall be subject to a civil penalty, not to exceed **[**$10,000 per day of such violation.**]** *$25,000 per day for each violation. In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require.*

* * * * * * *

(g)(1) ADMINISTRATIVE PENALTIES.—In addition to any other relief provided, whenever on the basis of any information available the Administrator finds that any person has violated sections 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or as violated any permit condition or limitation implementing any of such sections in a permit issued under sections 402 of this Act by him or by a State, or in a permit issued under section 404 by a State or the Secretary of

the Army, or any requirement imposed in a pretreatment program approved under section 402(a)(3) and (b)(8) of this Act, the Administrator may, after notice to the State in which the violation occurs, issue an order assessing a civil penalty of not more than $10,000 per day for each violation, up to a maximum administrative penalty of $125,000.

(2) The authority provided in paragraph (1) of this subsection shall expire on September 30, 1990.

(3) PROCEDURE.—(A) A civil penalty assessed by the Administrator under this subsection shall be by an order made after opportunity (provided in accordance with this subparagraph) for a hearing. Before issuing the order, the Administrator shall give to the person to be assessed a civil penalty written notice of the Administrator's proposal to issue such order and the opportunity to request, within thirty days of the date the notice is received by such person, a hearing on the proposed order. Such hearing shall not be subject to section 554 or 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.

(B) The Administrator shall provide public notice of and reasonable opportunity to comment on any proposed assessment.

(C) Any citizen who comments on a proposed assessment under subparagraph (B) shall be given notice of any hearing held under this subsection and of any order assessing a penalty. In any hearing held under subparagraph (A), such citizen shall have a reasonable opportunity to be heard and to present evidence. If no hearing is held prior to issuance of the order assessing the penalty, then upon presentation by such citizen, within thirty days of issuance of the order, of evidence that such order was inadequate or improper, the Administrator shall set aside such order immediately and provide a hearing in accordance with subparagraph (A) on the proposed order.

(D) Any order issued under this subsection shall become final thirty days following its issuance unless an appeal it taken pursuant to paragraph (6) or the order is set aside pursuant to subparagraph (C).

(4) CONTENT OF ORDER.—In determining the amount of a civil penalty, the Administrator shall take into account the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require.

(5) EFFECT OF ORDER.—(A) Action taken by the Administrator pursuant to this subsection shall not affect or limit the Administrator's authority to enforce any provision of this Act: Provided, however, That any violation with respect to which the Administrator has commenced and is diligently prosecuting an action under this subsection, or for which the Administrator has issued a final order not subject to further judicial review and the violator paid a penalty assessed under this subsection, shall not be the subject of a civil penalty action under section 309(d), section 311(b), or section 505 of this Act; Provided further, That the foregoing limitation on civil penalty actions under section 505 of this Act shall not apply with respect to any violation for which (i) a civil action under section 505(a)(1) of this Act has been filed prior to commencement of an action under

this subsection, or (ii) a notice of violation under section 505(b)(1) of this Act has been given prior to commencement of an action under this subsection and an action under section 505(a)(1) of this Act is filed prior to 120 days after such notice is given.

(B) Nothing in this subsection shall change the procedures now existing under other subsections of section 309 of this Act for issuance and enforcement of orders by the Administrator.

(C) No action by the Administrator pursuant to this subsection shall affect any person's obligation to comply with any section of this Act or with the terms and conditions of any permit issued pursuant to section 402 or 404 of this Act.

(6) JUDICIAL REVIEW.—Any person against whom a civil penalty order is issued or who commented on a proposed assessment pursuant to paragraph (3) may file an appeal of such order in the United States district court for the District of Columbia or in the district in which the violation is alleged to have occurred. This appeal may only be filed within the thirty-day period beginning on the date the civil penalty order is issued. Appellant shall simultaneously send a copy of the appeal by certified mail to the Administrator and to the Attorney General. The Administrator shall promptly file in such court a certified copy of the record on which the order was issued. The district court shall not set aside or remand such order unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator's assessment of the penalty constitutes an abuse of discretion and shall not impose additional civil penalties for the same violation unless the Administrator's assessment of the penalty constitutes an abuse of discretion.

(7) COLLECTION.—If any person fails to pay an assessment of a civil penalty—

(A) after an order is final under paragraph (3), or

(B) after a court in an action brought under paragraph (6) has entered a final judgment in favor of the Administrator,

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus costs, attorneys' fees, and interest at currently prevailing rates from the date of the final order or the date of such final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(8) SUBPOENA.—The Administrator may, in connection with administrative proceedings under this subsection, issue subpoenas compelling the attendance and testimony of witnesses and subpoenas duces tecum, and may request the Attorney General to bring an action to enforce any subpoena under this section. The district courts shall have jurisdiction to enforce such subpoenas and impose sanctions.

* * * * * * *

CLEAN LAKES

SEC. 314. [(a) Each State shall prepare or establish, and submit to the Administrator for his approval—

[(1) an identification and classification according to eutrophic condition of all publicly owned fresh water lakes in such State;

[(2) procedures, processes, and methods (including land use requirements), to control sources of pollution of such lakes; and

[(3) methods and procedures, in conjunction with appropriate Federal agencies, to restore the quality of such lakes.]

(a)(1) Each State shall prepare a report on a biennial basis which shall include—

(A) an identification and classification according to eutrophic condition of all publicly owned lakes in such State;

(B) a list and description of those publicly owned lakes for which uses are known to be impaired, including those lakes which are known to not meet applicable water quality standards, or which require implementation of protection programs to maintain compliance with applicable standards; and

(C) a description of the State programs and methods to control sources of pollution of lakes and protect the quality of lakes.

(2) The report provided for in paragraph (1) shall be included in the report required under section 305(b) of this Act.

(3) A State must submit a report in accord with paragraph (1) in order to receive a grant under this section.

* * * * * * *

(c)(1) The amount granted to any State for any fiscal year under this section shall not exceed 70 per centum of the funds expended by such State in such year for carrying out approved methods and procedures under this section.

(2) There is authorized to be appropriated $50,000,000 for the fiscal year ending June 30, 1973; $100,000,000 for the fiscal year 1974; $150,000,000 for the fiscal year 1975, $50,00,000 for fiscal year 1977, $60,000,000 for fiscal year 1978, $60,000,000 for fiscal year 1979, $60,000,000 for fiscal year 1980, $30,000,000 for fiscal year 1981, [and] $30,000,000 for fiscal year 1982 , *and $30,000,000 per fiscal year for fiscal years 1986, 1987, 1988, and 1989* for grants to States under this section which such sums shall remain available until expended. The Administrator shall provide for an equitable distribution of such sums to the States with approved methods and procedures under this section.

* * * * * * *

NONPOINT SOURCE POLLUTION MANAGEMENT PROGRAM

SEC. 319. (a)(1) Each State, by itself or in combination with adjacent States, shall after notice and opportunity for public comment, submit to the Administrator, within eighteen months after the date of enactment of the Clean Water Act Amendments of 1985, a proposed nonpoint source pollution management program which shall—

(A) identify those waters within its boundaries which without additional action to control nonpoint sources of pollution cannot reasonably be expected to attain or maintain (i) applica-

ble water quality standards, or (ii) the goals and requirements of the Act;

(B) designate categories or subcategories of nonpoint sources of pollutants or, where appropriate, particular nonpoint sources, that contribute significant pollution loadings to the waters identified under subparagraph (A);

(C) identify best management practices which will be undertaken to reduce pollutant loadings resulting from each category, subcategory or particular nonpoint source designated under subparagraph (B), taking into account the impact of the proposed practice on ground water quality;

(D) identify programs (including, as appropriate, nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) to achieve implementation of the best management practices by the categories, subcategories, and particular nonpoint sources designated under subparagraph (B);

(E) include a schedule containing annual milestones for (i) utilization of the program implementation methods identified in subparagraph (D), and (ii) implementation of the best management practices identified in subparagraph (C) by the categories, subcategories, or particular nonpoint sources designated under subparagraph (B). Such schedule shall provide for utilization of the program implementation methods and implementation of best management practices at the earliest practicable date;

(F)(i) include a statement from the attorney general of such State or States (for the attorney for those State water pollution control agencies which have independent legal counsel) that the laws of such State or States, as the case may be, provide adequate authority to carry out the described program, or what additional authorities would be necessary to do so, and (ii) if this statement identifies additional needed authorities, include a schedule and commitment by the State to seek such authorities as expeditiously as practicable; and

(G) include an identification of Federal financial assistance programs and Federal development projects for which the State will review individual assistance applications or development projects for their effect on water quality pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983, to determine whether such assistance applications or development projects would be consistent with and further the purposes and objectives of the program prepared under this subsection. For the purposes of this paragraph, identification shall not be limited to the assistance programs or development projects subject to the Executive Order 12372 but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the State's nonpoint source pollution management program.

(2) In developing the nonpoint source management program required by this section, the State (A) may rely upon information developed pursuant to sections 208, 303(e), 304(f), 305(b), and 314, and

other information as appropriate, and (B) may utilize appropriate elements of the waste treatment management plans developed pursuant to section 208(b), to the extent such elements are consistent with and fulfill the requirements of this section.

(3) In developing and implementing the management program described in this subsection, a State may make use of local agencies or organizations.

(b)(1) Within six months of the date of receipt of a proposed nonpoint source management program, the Administrator shall, after notice and opportunity for public comment, make a determination whether the State's proposed management program meets the requirements of subsection (a)(1) of this section.

(2) If the Administrator determines that the proposed management program does not meet the requirements of subsection (a)(1) of this section, he shall within six months of receipt of the proposed program notify the State of any revisions or modifications necessary to obtain approval. The State shall thereupon have an additional three months to submit is revised management program and the Administrator shall approve or disapprove such revised program within three months of receipt.

(3) Pursuant to paragraph (1) or (2) of this subsection, the Administrator shall approve those State management programs that he determines meet the requirements of subsection (a)(1) of this section.

(4) If the Administrator fails to approve the State management program pursuant to paragraph (1) of this subsection or fails to notify the State of necessary revisions pursuant to paragraph (2) of this subsection within six months of receipt of the State program, or if he fails to approve or disapprove the program pursuant to paragraph (2) of this subsection within three months of receipt of the revised program, the program shall be deemed to have been approved by the Administrator.

(c) If a State fails to submit a nonpoint source pollution management program that the Administrator determines meets the requirements of subsection (a)(1) of this section, the Administrator shall notify such State, and within thirty months after the date of enactment of the Clean Water Act Amendments of 1985, after consultation with appropriate Federal and State agencies and other interested persons, carry out the requirements of subsections (a)(1) (A) and (B) of this section for such State. Upon completion of this requirement, the Administrator shall report to Congress on his actions pursuant to this section.

(d)(1) The Administrator shall award grants, subject to such terms and conditions as the Administrator considers appropriate, to assist States in the implementation of management programs which have been approved pursuant to subsection (b) of this section. Such grants shall not exceed 75 per centum of the costs of implementing the program in any fiscal year and shall be made on condition that non-Federal sources provide at least 25 per centum of the costs that receive funding under this subsection.

(2)(A) Two-thirds of the funds appropriated in any fiscal year for grants under this section shall be made available for allotment to the several States in accordance with the following table:

State	Percentage allotment
Alabama	*1.56*
Alaska	*.50*
Arizona	*1.95*
Arkansas	*1.43*
California	*6.37*
Colorado	*2.19*
Connecticut	*.68*
Delaware	*.50*
District of Columbia	*.50*
Florida	*2.66*
Georgia	*2.04*
Hawaii	*.50*
Idaho	*1.20*
Illinois	*4.03*
Indiana	*2.07*
Iowa	*2.39*
Kansas	*2.78*
Kentucky	*1.32*
Louisiana	*1.56*
Maine	*.55*
Maryland	*1.03*
Massachusetts	*1.25*
Michigan	*2.67*
Minnesota	*2.43*
Mississippi	*1.40*
Missouri	*2.44*
Montana	*2.46*
Nebraska	*2.26*
Nevada	*1.78*
New Hampshire	*.50*
New Jersey	*1.62*
New Mexico	*1.93*
New York	*4.22*
North Carolina	*1.90*
North Dakota	*2.14*
Ohio	*3.14*
Oklahoma	*2.05*
Oregon	*1.75*
Pennsylvania	*2.97*
Rhode Island	*.50*
South Carolina	*1.09*
South Dakota	*1.94*
Tennessee	*1.50*
Texas	*8.08*
Utah	*1.36*
Vermont	*.50*
Virginia	*1.60*
Washington	*1.58*
West Virginia	*.60*
Wisconsin	*1.90*
Wyoming	*1.39*
Guam	*.10*
Northern Marianas	*.10*
Pacific Trust Territories	*.10*
Puerto Rico	*.72*
Samoa	*.10*
Virgin Islands	*.10*
Total	*100.00*

(B) One-third of the funds appropriated in any fiscal year for grants under this section shall be made available to the Administrator who shall make grants in response to applications from States if the Administrator determines such grants are necessary and appropriate to assist such States in—

(i) controlling particularly difficult or serious nonpoint source pollution problems, including, but not limited to, problems resulting from mining activities;

(ii) implementing innovative methods or practices for controlling nonpoint sources of pollution, including both regulatory or nonregulatory programs where the Administrator deems appropriate;

(iii) controlling insterstate nonpoint source pollution problems;

(iv) assessing the relationship between nonpoint source pollution and ground water contamination; or

(v) providing financial assistance for implementation by an Indian tribe, within the reservation, of an approved management program: Provided, That any such Inidan tribe shall be subject to all terms and conditions of this section applying to a State. Financial assistance to any one reservation under this clause shall not exceed one-third of 1 per centum of the total amount appropriated for grants for each year.

(3) The funds allotted to the States pursuant to paragraph (2)(A) of this subsection for a fiscal year shall remain available for obligation for the fiscal year for which appropriated. The amount of any such allotments not obligated by the end of such fiscal year and any unobligated funds remaining under paragraph (2)(B) of this subsection shall be realloted by the Administrator for the next fiscal year on the basis of the table in paragraph (2)(A).

(4) States may use funds from grants made pursuant to this section for financial assistance to persons only to the extent that such assistance is related to the costs of demonstration projects.

(5) No grant shall be made to a State under this section unless the Administrator determines, on the basis of information provided by the State and from other relevant sources, that the State is implementing the program satisfactorily in terms of the requirements and objectives of this section.

(6) No grant shall be made under this section to any State in any fiscal year in which the expenditure of non-Federal funds by such State for purposes comparable to the activities assisted by this section are less than the average level of such expenditures in the two fiscal years of such state next preceding the date of enactment of the Clean Water Act Amendments of 1985.

(7) The Administrator may request such information, data, and reports as he may deem necessary to make the determination of continuing eligibility for grants under this section.

(8) For the purpose of this section, there are authorized to be appropriated, to remain available until expended, $70,000,000 for the fiscal year ending September 30, 1986, $100,000,000 for the fiscal year ending September 30, 1987, and $130,000,000 for the fiscal year ending September 30, 1988.

(e) Each State shall report to the Administrator on an annual basis conerning (1) its progress in meeting the schedule of milestones submitted pursuant to subsection (a)(1)(E) of this section, and (2) to the extent that appropriate information is available, reductions in nonpoint source pollutant loading and improvements in water quality resulting from implementation of the management program.

(f) The Administrator shall

(1) transmit to the Office of Management and Budget and the appropriate Federal departments and agencies a list of those assistance programs and development projects identified by each State under subsection (a)(1)(G) for which individual assistance applications and projects will be reviewed pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983. Beginning not later than sixty days after receiving notification by the Administrator, each Federal department and agency shall modify existing regulations to allow States to review individual development projects and assistance applications under the identified Federal assistance programs and shall accommodate, according to the requirements and definitions of Executive Order 12372, as in effect on September 17, 1983, the concerns of the State regarding the consistency of such applications or projects with the State nonpoint source pollution management program;

(2) collect and make available, through publications and other appropriate means, information pertaining to management practices and implementation methods, including, but not limited to, (A) information concerning the costs and relative efficiencies of best management practices for reducing nonpoint source pollution; and (B) available data concerning the relationship between water quality and implementation of various management practices to control nonpoint sources of pollution; and

(3) submit to the Congress, within thirty-six months of enactment of the Clean Water Act Amendment of 1985, a report which on the basis of information submitted by the States pursuant to the subsections (a) and (e) of this section, and other information as appropriate:

(A) describes the management programs being implemented by the States by types and amount of affected waters, categories and subcategories of nonpoint sources, and types of best management practices being implemented;

(B) describes the experiences of the States in adhering the schedules and implementing best management practices;

(C) describes the amount and purpose of grants awarded pursuant to subsection (d) of this section;

(D) identifies, to the extent that information is available, the progress made in reducing pollutant loads and improving water quality in the waters of the United States; and

(E) indicates what further actions need to be taken to attain and maintain in those waters (i) applicable water quality standards and (ii) the goals and requirement of the Act.

NATIONAL ESTUARY PROGRAM

Sec. 320. (a)(1) Whenever the Administrator determines that the attainment and maintenance of the chemical, physical, and biological integrity of an estuary requires the interstate or international control of sources of pollution to supplement existing controls, the Administrator shall convene, for a period not to exceed five years, an estuarine management conference, to—

(A) assess trends in water quality, natural resources, and uses of the estuary;

(B) collect, characterize, and assess data on toxics, nutrients, and natural resources within the estuarine zone to identify the causes of environmental problems;

(C) develop the relationship between the inplace loads and point and nonpoint loadings of pollutants to the estuarine zone and the potential uses of the zone, water quality, and natural resources;

(D) develop a comprehensive conservation and management plan that recommends priority corrective actions and compliance schedules addressing point and nonpoint sources of pollution to restore and maintain the chemical, physical, and biological integrity of the estuary, including restoration and maintenance of water quality, a balanced indigenous population of shellfish, fish and wildlife, and recreational activities in the estuary, and assure that the designated uses of the estuary are protected;

(E) develop plans for the coordinated implementation of the plan by the States as well as Federal and local agencies participating in the conference;

(F) monitor the effectiveness of actions taken pursuant to the plan; and

(G) review any Federal financial assistance program or federal development project subject to the requirements of Executive Order 12372, as in effect on September 17, 1983, to determine whether such assistance program or project would be consistent with and further the purposes and objectives of any plan prepared under this section. For purposes of this subparagraph, these programs and projects shall not be limited to the assistance programs or development projects subject to Executive Order 12372, but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of any plan developed pursuant to this section.

(b) The members of a management conference convened under this section shall include, at a minimum, the Administrator and representatives of—

(1) each State and foreign nation located in whole or in part in the estuarine zone of the estuary for which the conference is convened;

(2) international, interstate, or regional agencies having jurisdiction over all or a significant part of the estuary;

(3) each interested Federal agency, as determined appropriate by the Administrator;

(4) local governments within the estuarine zone, as determined appropriate by the Administrator; and

(5) affected industries, public and private educational institutions and the general public in the estuarine zone.

(c) Prior to developing a comprehensive conservation and management plan under this section, the management conferees shall survey and use existing reports, data, and studies as well as local master or regional plans relating to the estuary that have been de-

veloped by or made available to Federal, interstate, international, State, or local agencies.

(d)(1) Not later than ninety days after the completion of a conservation and management plan, the Administrator shall, if the plan satisfies the purposes of this section and the affected Governor or Governors concur, approve such plan.

(2) Upon approval of a conservation and management plan under this section, funds authorized to be appropriated under titles II and VI and section 319 of this Act may be used in accordance with the applicable requirements of this Act, to assist States with the implementation of such plan.

(e) There are authorized to be appropriated to the Administrator not to exceed $12,000,000 per fiscal year for each of the fiscal years 1986, 1987, 1988, and 1989, for:

(1) expenses related to the administration of management conferences under this section, not to exceed 10 per centum of the amount appropriated under this paragraph;

(2) grants to State, interstate or regional water pollution control agencies for research, surveys, studies, monitoring, modeling, and other technical work necessary for the development of a conservation and management plan under this section: Provided, That such grants shall not exceed 75 per centum of the costs of such technical work and shall be made on condition that non-Federal sources provide at least 25 per centum of the costs that receive funding under this paragraph; and

(3) the costs of monitoring the implementation of a conservation and management plan. Such monitoring shall be done by the management conference or, in any case in which the conference has expired or been terminated, by the Administrator.

(f) Any State, interstate, or regional agency that receives a grant under subsection (e) shall report to the Administrator not later than eighteen months after receipt of such grant and biennially thereafter on the progress being made under this section.

(g) For the purposes of this section, the terms "estuary" and "estuarine zone" shall have the same meanings such terms have in section 104(n)(4) of this Act, except that the term "estuarine zone" shall include those portions of tributaries draining into the estuary up to the historic height of migration of anadromous fish or the historic head of tidal influence, whichever is higher.

TITLE IV—PERMIT AND LICENSES

* * * * * * *

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

SEC. 402. (a)(1) Except as provided in sections 318 and 404 of this act, the Administrator may, after opportunity for public hearing issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 301(a), upon condition that such discharge will meet either *(A)* all applicable requirements under sections 301, 302, 306, 307, 308, and 403 of this Act, or *(B)* prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this Act.

* * * * * * *

(b) At any time after the promulgation of the guidelines required by subsection (h)(2) of section 304 of this Act, the Governor of each State desiring to administer its own permit program *or part of a permit program in accordance with paragraph (10) of this subsection,* for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program. The Administrator shall approve each such submitted program unless he determines that adequate authority does not exist:

(1) To issue permits which—

(A) * * *

(E) shall be reconsidered for termination or modification at any time a State other than that in which the source is located provides notice that the permitted discharge is causing a substantial violation of a water quality requirement (including any standard) of such State or adversely affecting the public health of such State and seeks a modification of such permit;

* * * * * * *

(10) In the event a Governor submits a plan to administer part of a permit program, the Administrator may approve such plan upon a showing that—

(A)(i) the plan provides for administration of permit program components which represents a significant and identifiable part of the State program authorized by this section; and

(ii) the plan provides for and the State agrees to make all reasonable efforts to assume administration of the remainder of the program by a specific future date not to exceed five years from submission of the State's initial plan; or

(B)(i) the plan provides for administration of a permit program for one or more discharge categories such as Federal facilities, municipal or industrial categories, or any other category of discharges which represents a significant and identifiable part of the permit program in the State; and

(ii) the plan covers all categories of discharges under the jurisdiction of the State agency or department responsible for administering the plan and represents a complete permit program for all categories of discharges contained in the plan. For purposes of the preceding sentence "a complete permit program." means one for which adequate authority exists to carry out each of the activities listed in paragraphs (1) through (9) of this subsection.

(c)(1) Not later than ninety days after the date on which a State has submitted a program (or revision thereof) pursuant to subsection (b) of this section, the Administrator shall suspend the issuance of permits under subsection (a) of this section as to those navigable waters *as to those activities and discharges* subject to such program unless he determines that the State permits program does not meet the requirements of section (b) of this section or does not conform to the guidelines issued under section 304(i) (2) of this Act. If the Administrator so determines, he shall notify the State of any revisions or modifications necessary to conform to such requirement or guidelines.

* * * * * * *

(4) In the event a determination is made (A) by a State to return adminsitration of the program to the Administrator or (B) by the Administrator to withdraw approval pursuant to paragraph (3) of this subsection, return of administration or withdrawal of approval may only be made of the entire program currently being administered by the State.

(a)(i) * * *

(2) *(A)* No permit shall issue [A]*(i)* if the Administrator within ninety days of the date of his notification under subsection (b)(5) of this section objects in writing to the issuance of such permit, or [B]*(ii)* if the Administrator within ninety days of the date of transmittal of the proposed permit as being outside the guidelines and requirements of this Act. Whenever the Administrator objects to the issuance of a permit under this paragraph such written objection shall contain a statement of the reasons for such objection and the effluent limitations and conditions which such permit would include if it were issued by the Administrator.

(B) In the case of the failure of any State to accept the recommendations of another State whose waters may be affected by the issuance of a permit, submitted in accordance with subsection (b)(5), the Administrator shall determine within 90 days following written objection to the Administrator by the State whose recommendations were not accepted, whether any substantial violation of a water quality requirement (including any standard) of the affected State or adverse effect on public health of the affected State will result from the issuance of such permit. If the Administrator so determines, the Administrator shall object to the issuance of such permit or provide specific modifications to such permit. Any such determination shall be provided in writing to the affected State and such determination or such objection shall be reviewable in the appropriate Circuit Court of Appeals under section 509(b) of this Act as the issuance of denial of a permit under section 402.

* * * * * * *

(l)*(1)* The Administrator shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture, nor shall the Administrator directly or indirectly, require any State to require such a permit.

(2) The Administrator shall not require a permit under this section nor impose effluent limitations, nor shall the Administrator directly or indirectly require any State to require such a permit or

impose such limitations, for discharges of stormwater runoff from oil or gas exploration, production, processing, or treatment operations, composed entirely of flows from conveyances or systems of conveyances (including pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and not contaminated with process wastes, toxic pollutants above background levels, hazardous substances in excess of reportable quantities, or oil or grease in excess of reportable quantities.

(m) In issuing a permit under this section, the Administrator shall not require pretreatment by dischargers of conventional pollutants identified pursuant to section 304(b)(4) of this Act as a substitute for municipal treatment adequate to meet the requirements of a permit issued under this section for a treatment works (as defined in section 212 of this Act) which is publicly owned if such discharger is in compliance with all applicable requirements of local pretreatment programs approved under subsection (b)(8) of this section. Nothing in this subsection shall affect the Administrator's authority under sections 307 and 309 of this Act, affected State and local authority under sections 307(b)(4) and 510 of this Act, relieve such treatment works of its obligations to meet requirements established under this Act, or preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.

(n) In the case of effluent limitations established on the basis of subsection (a)(1)(B) of this section, a permit may not be renewed, reissued or modified solely on the basis of effluent guidelines promulgated under section 304(b) subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit. If the source has installed the treatment facililities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, the limitations in the renewed, reissued or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance or modification).". In the case of effluent limitations established on the basis of section 301(b)(1)(C) or section 303(d) or (e), a permit may be renewed, reissued, or modified on the basis of subsequently revised waste load allocations under section 303(d) to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit only in compliance with section 303(d)(5).

PERMITS FOR DREDGED OR FILL MATERIAL

SEC. 404. (a) * * *

* * * * * * *

(s)(1) * * *

* * * * * * *

[(4)(A) Any person who willfully or negligently violates any condition or limitation in a permit issued by the Secretary under this section shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

[(B) For the purposes of this paragraph, the term "person" shall mean, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.]

[(5)] *(4)* Any person who violates any condition or limitation in a permit issued by the Secretary under this section, and any person who violates any order issued by the Secretary under paragraph (1) of this subsection, shall be subject to a civil penalty not to exceed [$10,000 per day of such violation.] *$25,000 per day for each violation. In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require.*

DISPOSAL OF SEWAGE SLUDGE

SEC. 405. (a) Notwithstanding any other provision of this Act, or of any other law, in the case where the disposal of sewage sludge resulting from the operation of a treatment works as defined in section 212 of this Act (including the removal of in-place sewage sludge from one location and its deposit at another location) would result in any pollutant from such sewage sludge entering the navigable waters, such disposal is prohibited except in accordance with a permit issued by the Administrator under section 402 of this Act.

(b) The Administrator shall issue regulations governing the issuance of permits for the disposal of sewage sludge subject to subsection (a) of this section and section 402 of this Act. Such regulations shall require the application to such disposal of each criterion, factor, procedure, and requirement applicable to a permit issued under section 402 of this title.

(c) Each State desiring to administer its own permit program for disposal of sewage sludge subject to subsection (a) of this section within its jurisdiction may do so, in accordance with section 402 of this Act.

(d)*(1)* The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after the date of enactment of this subsection and from time to time thereafter, regulations providing guidelines for the disposal of sludge and the utilization of sludge for various purposes. Such regulations shall—

[(1)] *(A)* identify uses for sludge, including disposal;

[(2)] *(B)* specify factors to be taken into account in determining the measures and practices applicable to each such use or disposal (including publication of information on costs);

[(3)] *(C)* identify concentrations of pollutants which interfere with each such use or disposal.

The Administrator is authorized to revise any regulation issued under this subsection.

(2)(A)(i) Not later than April 1, 1986, the Administrator shall identify those toxic pollutants which, on the basis of available information on their toxicity, persistence, concentration, mobility, or potential for exposure, may be present in sewage sludge in concentrations which may adversely affect public health or the environment, and propose regulations specifying acceptable management practices for sewage sludge containing each such toxic pollutant and establishing numerical limitations for each such pollutant for each use identified under paragraph (1)(A).

(ii) Not later than March 1, 1987, and after opportunity for public hearing, the Administrator shall promulgate the regulations required by subparagraph (A)(i).

(B)(i) Not later than February 1, 1987, the Administrator shall identify those toxic pollutants not identified under subparagraph (A)(i) which may be present in sewage sludge in concentrations which may adversely affect public health or the environment, and propose regulations specifying acceptable management practices for sewage sludge containing each such toxic pollutant and establishing numerical limitations for each pollutant for each such use identified under paragraph (1)(A).

(ii) Not later than December 15, 1987, the Administrator shall promulgate the regulations required by subparagraph (B)(i).

(C) The management practices and numerical criteria established under subparagraphs (A) and (B) shall be adequate to protect public health and the environment from any reasonably anticipated adverse effects of each pollutant. Such regulations shall require compliance no later than twelve months after their publication, unless such regulations require the construction of new pollution control technology, in which case the regulations shall require compliance as expeditiously as practicable but in no case later than two years from the date of their publication.

(D) For purposes of this subparagraph, if, in the judgment of the Administrator, it is not feasible to prescribe or enforce a numerical limitation for a pollutant identified under this paragraph, the Administrator may instead promulgate a design, equipment, management practice, or operational standard, or combination thereof, which in the judgment of the Administrator is adequate to protect public health and the environment from any reasonably anticipated adverse effects of such pollutant.

(E) Prior to the promulgation of the regulations required by subparagraphs (A) and (B), the Administrator shall impose conditions in permits issued to publicly owned treatment works under section 402 of this Act or take such other measures as the Administrator deems appropriate to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge.

(F) Nothing in this section authorizes the establishment of any requirement or time for compliance which is less stringent than required by any other law.

[(e) The determination of the manner of disposal or use of sludge is a local determination except that it shall be unlawful for the owner or operator of any publicly owned treatment works to dis-

pose of sludge from such works for any use for which guidelines have been established pursuant to subsection (d) of this section, except in accordance with such guidelines.]

(e) The determination of the manner of disposal or use of sludge is a local determination, except that it shall be unlawful for any person to dispose of sludge from a publicly owned treatment works or any other treatment works treating primarily domestic sewage (but not including privately owned treatment works operated in conjunction with industrial manufacturing and processing facilities) for any use for which regulations have been established pursuant to subsection (d) of this section, except in accordance with such regulations.

(f)(1) Any permit issued under section 402 of this Act to a publicly owned treatment works or any other treatment works treating primarily domestic sewage (but not including privately owned treatment works operated in conjunction with industrial manufacturing and processing facilities) shall include requirements for the use and disposal of sludge that implement the regulations established pursuant to subsection (d) of this section, unless such requirements have been included in a permit issued under the appropriate provisions of subtitle C of the Solid Waste Disposal Act, part C of the Safe Drinking Water Act, the Marine Protection, Research and Sanctuaries Act of 1972, or the Clean Air Act, or under State permit programs approved by the Administrator, where the Administrator determines that such programs assure compliance with any applicable requirements of this section. Not later than December 15, 1985, the Administrator shall promulgate procedures for approval of State programs pursuant to this paragraph.

(2) In the case of a treatment works described in paragraph (1) that is not subject to section 402 of this Act and to which none of the other above listed permit programs nor approved State permit authority apply, the Administrator may issue a permit to such treatment works solely to impose requirements for the use and disposal of sludge that implement the regulations established pursuant to subsection (d) of this section. The Administrator shall include in the permit appropriate requirements to assure compliance with the regulations established pursuant to subsection (d) of this section. The Administrator shall establish procedures for issuing permits pursuant to this paragraph.

TITLE V—GENERAL PROVISIONS

* * * * * * *

GENERAL DEFINITIONS

SEC. 502. Except as otherwise specifically provided, when used in this Act:

(1) * * *

* * * * * * *

(20) the term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community (including any Alaska Native village, as defined in section 113(g), but not including any Alaska Native regional or village corporation) which is rec-

ognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

CITIZEN SUITS

SEC. 505. (a) * * *

* * * * * * *

(e) *(1)* Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any effluent standard or limitation or to seek any other relief (including relief against the Administrator or a State agency).

(2) Nothing in this Act shall affect or modify in any way the liabilities of any person under other Federal statutes for damages caused by noncompliance with any requirement of this Act or any permit issued under this Act.

(3) In any case involving the application of State common or statutory law to an instance where a discharge of pollutants arising in another State is alleged to have an adverse effect on the public health or welfare or the attainment of any water quality requirement of such State or municipality, a State or municipality shall be considered a citizen of such State for the purpose of filing an action in, or seeking removal to, a Federal district court to section 1332 of title 28, United States Code.

(f) For purposes of this section, the term "effluent standard or limitation under this Act" means (1) effective July 1, 1973, an unlawful act under subsection (a) of section 301 of this Act; (2) an effluent limitation or other limitation under section 301 or 302 of this Act; (3) standard or performance under section 306 of this Act; (3) prohibition, effluent standard or pretreatment standards under section 307 of this Act; (5) certification under section 401 of this Act; [or] (6) a permit or condition thereof issued under section 402 of this Act, which is in effect under this Act (including a requirement applicable by reason of section 313 of this Act)*; or (7) a regulation under section 405(d) of this Act.*

ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

SEC. 509. (a)(1) * * *

* * * * * * *

(b)(1) review of the Administrator's action (A) in promulgating any standard of performance under section 306, (B) in making any determination pursuant to section 306(b)(1)(C), (C) in promulgating any effluent standard, prohibition, or pretreatment standard under section 307, (D) in making any determination as to a State permit program submitted under section 402(b), (E) in approving promulgating any effluent limitation or other limitation under section 301, 302, [or 306,] *306, or 405,* and (F) in issuing or denying any permit under section 402, may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person resides or [transacts such business] *transacts business which is directly affected by such action* upon application by such person. Any such application shall be made within ninety days from the date of such determination, approval, promulgation, issuance or denial, or after such date only if such application is based solely on grounds which arose after such ninetieth day.

* * * * * * *

(3)(A) If applications for review of the same agency action have been filed under paragraph (1) of this subsection in two or more Circuit Courts of Appeals of the United States and the Administrator has received written notice of the filing of one or more applications within thrity days or less after receiving written notice of the filing of the first application, then the Administrator shall promptly advise in writing the Administrative Office of the United States Courts that applications have been filed in two or more Circuit Courts of Appeals of the United States, and shall identify each court for which he has written notice that such applications have been filed within thirty days or less of receiving written notice of the filing of the first such application. Pursuant to a system of random selection devised for this purpose, the Administrative Office thereupon shall, within three business days of receiving such written notice from the Administrator, select the court in which the record shall be filed from among those identified by the Administrator. Upon notification of such selection, the Administrator shall promptly file the record in such court. For the purpose of review of agency action which has previously been remanded to the Administrator, the record shall be filed in the Circuit Court of Appeals of the United States which remanded such action.

(B) Where applications have been filed under paragraph (1) of this subsection in two or more Circuit Courts of Appeals of the United States with respect to the same agency action and the record has been filed in one of such courts pursuant to paragraph (3)(A), the other courts in which such applications have been filed shall promptly transfer such applications to the Circuit Court of Appeals of the United States in which the record has been filed. Pending selection of a court pursuant to paragraph (3)(A), any court in which an applicantion has been filed under paragraph (1) of this subsection may postpone the effective date of the agency action until fifteen days after the Administrative Office has selected the court in which the record shall be filed.

(C) Any court in which an application with respect to any agency action has been filed under paragraph (1) of this subsection, including any court selected pursuant to paragraph (3)(A), may transfer such application to any other Circuit Court of Appeals of the United States for the convenience of the parties or otherwise in the interest of justice.

(4) In any judicial proceeding under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party whenever it determines that such award is appropriate.

OTHER AFFECTED AUTHORITY

SEC. 511. (a) * * *

* * * * * * *

(e) Any State or municipality the water quality of which is adversely affected by pollutants from another State may petition the Administrator who, upon determining on the record after opportunity for Agency hearing pursuant to 5 U.S.C. 554, 556, and 557 that such pollution is causing a substantial violation of a water quality requirement (including any standard) of such State or adversely affecting the public health of such State, shall issue an order within 90 days restraining any person causing or contributing to such pollution or providing such other relief as is appropriate, taking into account the goals and requirements of this Act and other equitable considerations. In no case shall such order or other relief based solely on this subsection supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws. This subsection shall not apply in any case in which section 402(d)(2)(B) or section 402 (b)(1)(F) is available, nor to any pollution which is subject to the Colorado River Salinity Control Act of 1974, nor to any water pollution which results from emissions from mobile or stationary sources which are regulated under the Clean Air Act.

REPORTS TO CONGRESS

SEC. 516. (a) * * *

* * * * * * *

(f) The Administrator shall submit to the Congress by February 10, 1990, a report on the financial status and operations of Water Polution Control Revolving Funds established by the States in accordance with title VI of this Act. The Administrator, in cooperation with the States, including water pollution control agencies and other water pollution control planning and financing agencies, shall include in such report the following:

(1) an inventory of the facilities that are in significant noncompliance with the enforceable requirements of this Act;

(2) an estimate of the cost of construction for such facilities that require construction to meet such requirements;

(3) an assessment of the availability of sources of funds for financing such needed construction, including an estimate of the amount of funds available for loans through September 30, 1999, from the Water Pollution Control Revolving Funds established by the States under title VI of this Act;

(4) an assessment of the operations, loan portfolio and loan conditions of Water Pollution Control Revolving Funds established by the States under title VI of this Act;

(5) an assessment of the effect on user charges of the assistance provided by Water Pollution Control Revolving Funds established by the States under title VI, compared to assistance under title II of this Act; and

(6) an assessment of the efficiency of the operation and maintenance of treatment works constructed with financial assistance under titles II and VI of this Act.

GENERAL AUTHORIZATION

SEC. 517. There are authorized to be appropriated to carry out this Act, other than sections 104, 105, 106(a), 107, 108, 112, 113, 114, 115, 206, 207, 208 (f) and (h), 209, 304, 311 (c), (d), (i), (l), and (k), 314, 315, and 317, $250,000,000 for the fiscal year ending June 30, 1973, $300,000,000 for the fiscal year ending June 30, 1974, $350,000,000 for the fiscal year ending June 30, 1975, $100,000,000 for the fiscal year ending September 30, 1977, $150,000,000 for the fiscal year ending September 30, 1978, $150,000,000 for the fiscal year ending September 30, 1979, $150,000,000 for the fiscal year ending September 30, 1980, $150,000,000 for the fiscal year ending September 30, 1981, **[and]** $160,000,000 for the fiscal year ending September 30, 1982, *and $160,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989.*

TITLE VI—GRANTS FOR WATER POLLUTION CONTROL REVOLVING FUNDS

AUTHORIZATION, ALLOTMENT, AWARD, AND PAYMENT

SEC. 601. (a) There are hereby authorized to be appropriated the following sums to carry out the purposes of this title:

(1) $1,200,000,000 per fiscal year for the fiscal years 1989 and 1990;

(2) $2,400,000,000 for the fiscal year 1991;

(3) $1,800,000,000 for the fiscal year 1992;

(4) $1,200,000,000 for the fiscal year 1993; and

(5) $600,000,000 for the fiscal year 1994.

(b) Sums appropriated to carry out this title for each fiscal year shall be allotted by the Administrator in accordance with section 205(c) of this Act.

(c) Sums allotted to the States for a fiscal year shall be available for a grant award under subsection (d) during the fiscal year for which authorized. The amount of any allotment not obligated by the end of such fiscal year shall be immediately reallotted by the Administrator on the basis of the same ratio as is applicable to sums allotted under title II of this Act for the next fiscal year, except that none of the funds reallotted by the Administrator will be allotted to any State which failed to obligate any of the funds being reallotted.

(d) If a State has entered into a grant agreement with the Administrator as provided in section 602 of this title, the Administrator is authorized to make a capitalization grant to the State from funds available for obligation under this title.

(e) From funds obligated for a given fiscal year pursuant to subsection (d) of this section, quarterly installment payments shall be made in accordance with the schedule of payments established under section 602(b)(2) of this title.

(f) If the Administrator determines that a State has not complied with agreements under section 602, or requirements of this title, the Administrator shall notify the State of such noncompliance and the necessary corrective action. If the State does not take such corrective action by the sixtieth day after the date the State receives notice, the

Administrator shall withhold additional payments to the State until the Administrator is satisfied that the State has taken the necessary corrective action.

(g) If the Administrator is not satisfied that adequate corrective actions have been taken by the State within twelve months of the notice provided under subsection (f) of this section, the payments withheld by the Administrator shall be made available for reallotment under subsection (c) of this section.

CAPITALIZATION GRANT AGREEMENTS WITH STATES

SEC. 602. (a) To receive a capitalization grant under this title, a State shall enter into an agreement with the Administrator which shall include but not be limited to the specifications set forth in subsection (b) of this section.

(b) The Administrator shall enter into an agreement with a State only after the State has established to the satisfaction of the Administrator that—

(1) the State has established a Water Pollution Control Revolving Fund, as defined in section 603 of this title;

(2) the State has agreed to accept grant payments under this title in accordance with a payment schedule established by the Administrator, and has agreed to deposit all such payments in the dedicated revolving fund;

(3) the State has deposited in the fund or has agreed to deposit in the fund, from State moneys, an amount equal to at least 15 per centum of the total of all capitalization grants, so that such necessary matching deposits are made no later than the date of each grant payment under the provisions of paragraph (2) of this subsection;

(4) the State has agreed to make binding loan commitments in an amount equal to 100 per centum of the amount of the grant payments within one year of the receipt of the quarterly payment of such funds;

(5) the State has made adequate assurances through submission of an intended use report under section 604(c) of this title that (A) all funds available in the Water Pollution Control Revolving Fund will be committed in an expeditious and timely manner, (B) treatment works projects that are constructed in whole or in part prior to fiscal year 1995 with funds directly made available by capitalization grants under this title or section 205(m) to the State Water Pollution Control Revolving Fund will meet the same requirements applicable to grant projects funded under title II, and (C) such funds will first be used to assure maintenance of progress in the completion of all projects needed to meet the enforceable deadlines, goals, and requirements of this Act;

(6) in addition to meeting the requirements of this title, the State has made assurances that it will commit or expend the payments so received in accordance with laws and procedures applicable to the commitment or expenditure of revenue of the State;

(7) in carrying out the requirements of section 604 of this title, the State will use accounting, audit, and fiscal procedures con-

forming to generallly accepted government accounting standards;

(8) the State will require as a condition of making a loan that recipients will maintain project accounts in accordance with generally accepted government accounting standards; and

(9) the State will make annual reports to the Administrator on the actual use of funds in accordance with section 604(d) of this title.

STATE WATER POLLUTION CONTROL REVOLVING FUNDS

SEC. 603. (a) To be eligible for an award of a grant under section 601 of this title, each State shall establish a Water Pollution Control Revolving Fund, administered by an instrumentality of the State with powers and limitations including those specified in subsections (b), (c), and (d) of this section.

(b) The amounts of funds available to the Water Pollution Control Revolving Fund shall be dedicated solely to providing financial assistance (1) to any municipality, intermunicipal, interstate, or State agency for construction of publicly owned treatment works (as defined in section 212(2) of title II of this Act) and (2) for the implementation of management programs established under sections 319 and 320. The fund shall be established, maintained, and credited with repayments, and the fund balance shall be available in perpetuity for this purpose.

(c) The instrumentality of the State administering the Water Pollution Control Revolving Fund shall be authorized to use the fund to make loans, on the condition that—

(1) such loans are made at or below market interest rates, including interest free loans, at terms not to exceed twenty years;

(2) annual principal payments shall commence not later than one year after completion of any project and all loans shall be fully amortized not later than twenty years after project completion;

(3) the recipient of a loan shall establish a dedicated source of revenue for repayment of loans; and

(4) the fund shall be credited with all repayment of principal and interest on all loans.

(d) Except as otherwise limited by State law, a Water Pollution Control Revolving Fund may be used—

(1) to buy or refinance the debt obligation of municipalities and intermunicipal and interstate agencies within the State at or below market rates, where such debt obligations were incurred after March 7, 1985;

(2) to guarantee, or purchase insurance for, local obligations where such action would improve credit market access or reduce interest rates;

(3) as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State if the proceeds of the sale of such bonds are deposited in the Water Pollution Control Revolving Fund;

(4) to provide loan guarantees for similar revolving funds established by municipalities or intermunicipal agencies;

(5) to earn interest on fund accounts; and

(6) for the reasonable costs of administering the fund and conducting activites under this title provided that such amounts shall not exceed 4 perr centum of all grant awards to such fund under section 601(d).

AUDITS, REPORTS, AND FISCAL CONTROLS

SEC. 604. (a) Each State electing to establish a Water Pollution Control Revolving Fund under this title shall establish fiscal controls and accounting procedures sufficient assure proper accounting during appropriate accounting periods for—

(1) payments received by the fund;

(2) disbursements made by the fund; and

(3) fund balances at the beginning and end of the accounting period.

(b) The Administrator shall conduct, or require each State to have conducted, not less than annually, an independent audit to review the operations of each Water Pollution Control Revolving Fund. Such audits shall be conducted by an entity independent of the State, and in accordance with the Comptroller General's standards for auditing government organizations, programs, activities, and functions. An audit under this subsection shall be completed in such time and manner as deemed necessary or appropriate by the Administrator to carry out the purposes of this title.

(c)(1) Each State shall, on an annual basis, prepare a plan on the intended uses of the amounts available to the fund. The plan shall include—

(A) a description of the short and long term goals and objectives of the State's Water Pollution Control Revolving Fund;

(B) information on the activities to be supported, including a description of project categories, discharge requirements under titles III and IV, terms of financial assistance, and communities served;

(C) assurances and specific proposals for meeting the requirements of section 602(b) (4) and (5) of this title; and

(D) the criteria and method established for the distribution of funds.

(2) To meet the requirements of this subsection and to facilitate comments from interested local governments and persons on the use of funds, a State may adapt or use priority systems and lists developed under section 216 of this Act.

(d) Beginning the first fiscal year after the receipt of payments under section 601(e) of this title, the State shall provide an annual report to the Administrator describing how the State has met the goals and objectives of the previous fiscal year as identified in the plan prepared for the previous fiscal year pursuant to subsection (c) of this section, including identification of loan recipients, loan amounts, and loan terms.

(e) The Administrator shall conduct an anual review of each State plan and report prepared under subsections (c) and (d) of this section, and other such materials as are considered necessary and appropriate in carrying out the purposes of this title. After reasonable notice by the Administrator to the State or the recipient of a loan from a Water Pollution Control Revolving Fund, the State or

loan recipient shall make available to the Administrator records the Administrator reasonably requires to review and determine compliance with this title.

○

II

Calendar No. 125

99TH CONGRESS
1ST SESSION

S. 1128

[Report No. 99–50]

To amend the Clean Water Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 14 (legislative day, APRIL 15), 1985

Mr. DOLE (for Mr. CHAFEE) from the Committee on Environment and Public Works, reported the following bill; which was read twice and placed on the calendar

---

A BILL

To amend the Clean Water Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Clean Water Act Amendments of 1985".

TITLE I—REGULATORY AMENDMENTS

AUTHORIZATION

SEC. 101. (a) Section 104(u)(1) of the Clean Water Act is amended by inserting immediately following "1982" the phrase ", and not to exceed $22,770,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989".

(b) Section 104(u)(2) of the Clean Water Act is amended by inserting immediately following "1982" the phrase ", and not to exceed $3,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989".

(c) Section 104(u)(3) of the Clean Water Act is amended by striking "and" after "1981," and by inserting immediately following "1982" the phrase ", and not to exceed $1,500,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989".

(d) Section 106(a)(2) of the Clean Water Act is amended by striking "and" after "1981" and inserting in lieu thereof a comma and by inserting ", 1986, 1987, 1988, and 1989" immediately following "1982".

(e) Section 112(c) of the Clean Water Act is amended by striking "and" after "1981," and inserting immediately following "1982" the phrase ", and $7,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989".

(f) Section 314(c)(2) of the Clean Water Act is amended by striking "and" after "1981," and inserting immediately following "1982" the phrase ", and $30,000,000 per fiscal year for fiscal years 1986, 1987, 1988, and 1989".

(g) Section 517 of the Clean Water Act is amended by striking "and" after "1981," and inserting immediately following "1982" the phrase ", and $160,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989".

SMALL FLOWS CLEARINGHOUSE

SEC. 102. Section 104(q) of the Clean Water Act is amended by adding the following new paragraph:

"(4) Notwithstanding section 205(d) of this Act, from funds that are set aside by States under section 205(i) of this Act and not obligated by the end of the twenty-four month period provided under section 205(d), the Administrator shall award a grant under this section in the amount of $1,000,000 or such unobligated amount, whichever is less, in each year, to support a National Clearinghouse to collect and disseminate information on small flows and innovative or alternative technologies, consistent with paragraph (3).".

COMPLIANCE DATES

SEC. 103. (a) Section 301(b)(2)(C) of the Clean Water Act is amended by striking "not later than July 1, 1984," and inserting immediately after "of this paragraph" the following: "as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than July 1, 1988".

(b) Section 301(b)(2)(E) of the Clean Water Act is amended by striking "not later than July 1, 1984," and inserting in lieu thereof "as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than July 1, 1988, compliance with".

(c) Section 301(b)(2)(F) of the Clean Water Act is amended by striking "not" after "subparagraph (A) of this paragraph" and inserting in lieu thereof "as expeditiously as practicable but in no case", and by striking "or not later than July 1, 1984," through the end of the sentence and inserting in lieu thereof "and in no case later than July 1, 1988".

(d) Section 301(b) of the Clean Water Act is amended by adding the following new paragraph:

"(3)(A) for effluent limitations under paragraph (1)(A)(i) of this subsection promulgated after January 1, 1982, and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for such industrial category issued before such date, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than July 1, 1988; and

"(B) for any effluent limitation in accordance with paragraph (1)(A)(i), (2)(A)(i), or (2)(E) of this subsection established only on the basis of section 402(a)(1) in a permit issued after enactment of the Clean Water Act Amendments of 1985, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established, and in no case later than July 1, 1988.".

OCEAN WAIVER

SEC. 104. (a) Section 301(h)(5) of the Clean Water Act is amended to read as follows:

"(5) sources introducing waste into such treatment works are in compliance with all applicable pretreatment requirements and the applicant has assured continued compliance with such requirements and, in the case of any treatment works serving a population of five thousand or more, the applicant has adopted and is enforcing a program to control the entrance of toxic pollutants from industrial sources into such treatment works, comparable to that required by section 402(b)(8);".

(b) Section 301(h) of the Clean Water Act is amended by—

(1) in paragraph (7), striking the period immediately after "the permit" and inserting in lieu thereof a semicolon.

(2) adding immediately after paragraph (7) the following new paragraph:

"(8) the applicant at the time such modification becomes effective will be discharging effluent which has received at least primary or equivalent treatment. For the purposes of this paragraph, "primary or equivalent treatment" means treatment by screening, sedimentation, and skimming adequate to remove at least 30 per centum of the biological oxygen demanding material and of the suspended solids in the treatment works influent, and disinfection, where appropriate.";

(3) in that portion of subsection (h) following new paragraph (8) as added by this Act,

(A) adding immediately after the first sentence thereof the following new sentence: "Such marine waters must exhibit characteristics assuring that water providing dilution does not contain significant amounts of previously discharged effluent from such treatment works."; and

(B) adding at the end thereof the following: "No permit issued under this subsection shall authorize the discharge of any pollutant into saline estuarine waters which at the time of application do not support a balanced indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish, fish and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed discharge.".

(c) Section 301(j)(1)(A) of the Clean Water Act is amended by inserting before the semicolon the following: ", except that a publicly owned treatment works which prior to December 31, 1982, had a contractural arrangement to use a portion of the capacity of an ocean outfall operated by another publicly owned treatment works which has applied for or received a modification under subsection (h) of this section, may apply for a modification under subsection (h) in its own right not later than thirty days after the enactment of the Clean Water Act Amendments of 1985".

MODIFICATION FOR NONCONVENTIONAL POLLUTANTS

SEC. 105. (a) Section 301(g)(1) of the Clean Water Act is amended by striking all preceding "upon a showing by the owner or operator" and inserting in lieu thereof "The Administrator, with the concurrence of the State, may modify the requirements of subsection (b)(2)(A) of this section with respect to the discharge from any point source of ammonia, chlorine, color, iron, or total phenols (4AAP) (when determined by the Administrator to be a nonconventional pollutant under this Act)".

(b) Section 301(g) of the Clean Water Act is amended by adding the following new paragraphs:

"(3) The Administrator may evaluate pollutants subject to this subsection prior to the enactment of the Clean Water Act Amendments of 1985, and if the Administrator determines that for one or more pollutants satisfactory test methods and data are available to make the determination required by paragraph (1), may recommend to the Congress the inclusion of such pollutants under this subsection.

"(4) Any request for a modification under this subsection shall be deemed to have been denied, if not approved by final agency action within one year after submission to the Administrator.

"(5) The amendment made to this subsection by the Clean Water Act Amendments of 1985 shall apply to all modification requests under this subsection pending on the date of enactment of the Clean Water Act Amendments of 1985. Such amendment to this subsection shall not have the effect of extending or reopening the deadline established in section 301(j)(1)(B).".

(c) Section 301(j)(2) of the Clean Water Act is amended by inserting after the first sentence thereof the following: "An application for a modification under subsection (g) shall not stay the applicant's obligation to comply with effluent limitations for all pollutants not the subject of an application for modification, and nothing in this section shall preclude the Administrator (or the State as appropriate) from issuing a permit containing effluent limitations for all pollutants not subject to a stay under this subsection pending a final decision on the request for a modification.".

FUNDAMENTALLY DIFFERENT FACTORS

SEC. 106. (a) Section 301 of the Clean Water Act is amended by adding the following new subsections:

"(n)(1) The Administrator, with the concurrence of the State, may establish an alternative requirement under subsection (b)(2) or section 307(b) for a facility that modifies the requirements of national effluent limitation guidelines or categorical pretreatment standards that would otherwise be applicable to such facility, if the owner or operator of such facility demonstrates to the satisfaction of the Administrator that—

"(A) the facility is fundamentally different with respect to the factors (other than cost) specified in section 304 (b) or (g) and considered by the Administrator in establishing such national effluent limitation guidelines or categorical pretreatment standards;

"(B) the application is based solely on information and supporting data submitted to the Administrator during the rulemaking for establishment of the applicable national effluent limitation guidelines or categorical pretreatment standard specifically raising the factors that are fundamentally different for such facility;

"(C) the alternative requirement is no less stringent than justified by the fundamental difference; and

"(D) the alternative requirement will not result in a non-water quality environmental impact which is markedly more adverse than the impact considered by the Administrator in establishing such national effluent limitation guideline or categorical pretreatment standard.

"(2)(A) an application for an alternative requirement under this subsection shall be submitted to the Administrator not later than one hundred twenty days after the publication of the final effluent limitation guideline or categorical pretreatment standard in the Federal Register. The Administrator shall deny any application that is not complete, without providing an opportunity for reapplication.

"(B) an application for an alternative requirement under this subsection shall be deemed to have been denied, if not approved by final agency action within two hundred forty days after submission to the Administrator.

"(C) For the purposes of this subsection, an application for an alternative requirement based on fundamentally different factors which is pending on the date of enactment of the Clean Water Act Amendments of 1985 shall be deemed to have been submitted to the Administrator thirty days after such date of enactment.

"(3) an application for an alternative requirement under this subsection shall not stay the applicant's obligation to comply with the effluent limitation guideline or categorical pretreatment standard which is the subject of the application.

"(4) The authority of this subsection shall apply only to those primary industrial categories identified in the permit regulations issued under section 402 as of the date of enactment of the Clean Water Act Amendments of 1985.

"(o) The Administrator shall prescribe and collect from each applicant fees reflecting the reasonable administrative costs incurred in reviewing and processing applications for modifications submitted to the Administrator pursuant to section 301 (c), (g), (h), (i), (m), and (n), section 304(d)(4), and section 316(a) of this Act. All amounts collected by the Administrator under this subsection shall be deposited into miscellaneous receipts of the Treasury.".

(b) Section 301(l) of the Clean Water Act is amended by striking "The" and inserting in lieu thereof "Other than as provided in subsection (n) of this section, the".

WATER QUALITY-BASED EFFLUENT LIMITATIONS AFTER BAT ATTAINMENT

SEC. 107. (a) Section 305 of the Clean Water Act is amended by adding the following new subsection:

"(c) Each State shall prepare and submit to the Administrator and the Congress within two years after the enactment of the Clean Water Act Amendments of 1985, and revise biennially thereafter, an identification of—

"(1) those waters within or adjacent to such State which after the application of effluent limitations required under section 301(b)(2) of this Act cannot reasonably be anticipated to attain or maintain (A) water quality standards for such waters reviewed, revised or adopted in accordance with section 303(c)(2)(B) of this Act, due to toxic pollutants, or (B) that water quality which shall assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water; and

"(2) those waters within or adjacent to such State which are public water supplies or otherwise important to public health protection, or which have a high quality use designation, and which because of such use and current or potential pollution are of high priority to such State.

In the case of any State which fails to submit the identification required by paragraph (1), or which submits an incomplete identification, the Administrator shall promptly prepare an identification in accordance with paragraph (1).".

(b) Section 304(a) of the Clean Water Act is amended by adding the following new paragraphs:

"(7) The Administrator, after consultation with appropriate State agencies and on the basis of criteria and information published under paragraphs (1) and (2) of this subsection, shall develop and publish, within nine months after the date of enactment of the Clean Water Act Amendments of 1985, guidance to the States on performing the identification required by section 305(c)(1) of this Act.

"(8) The Administrator, after consultation with appropriate State agencies and within two years after the date of enactment of the Clean Water Act Amendments of 1985, shall develop and publish information on methods for establishing and measuring water quality criteria for toxic pollutants on other bases than pollutant-by-pollutant criteria, including biological monitoring and assessment methods.".

(c) Section 303(c)(2) of the Clean Water Act is amended by inserting "(A)" after "(2)" and by adding the following new subparagraph:

"(B) Whenever a State reviews water quality standards pursuant to paragraph (1) of this subsection, or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria for all toxic pollutants listed pursuant to section 307(a)(1) of this Act, the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses. Such criteria shall be specific numerical criteria for such toxic pollutants and in addition may include criteria based on biological monitoring or assessment methods consistent with information published pursuant to section 304(a)(8). Particular attention shall be given to toxic pollutants which are highly persistent in the environment, bioaccumulative, or known or suspected carcinogens, mutagens, or teratogens. Nothing in this section shall be construed to limit or delay the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods or previously adopted numerical criteria.".

(d) Section 303(d) of the Clean Water Act is amended by adding the following new paragraph:

"(4) Not later than two years after the submittal of the identification required by section 305(c)(1) of this Act, each State shall establish effluent limitations for point sources discharging into each portion of the navigable waters identified under section 305(c)(1)(A) as necessary to attain applicable water quality standards, taking into account any substantial nonpoint source contributions of toxic pollutants and existing or planned controls on all sources. Such effluent limitations shall be incorporated into permits under section 402 of this Act, which shall provide for compliance as expeditiously as practicable, but in no event later than three years after the establishment of such effluent limitation.".

(e)(1) Section 302(a) of the Clean Water Act is amended by (1) inserting after "in the judgment of the Administrator" the phrase ", or as identified under section 305(c)"; and (2) inserting after "protection of" the phrase "public health,".

(2) Section 302(b) of the Clean Water Act is amended to read as follows:

"(b)(1) Prior to establishment of any effluent limitation pursuant to subsection (a) of this section, the Administrator shall publish such proposed limitation and within ninety days of such publication hold a public hearing.

"(2)(A) The Administrator, with the concurrence of the State, may issue a permit which modifies the effluent limitations required by subsection (a) of this section for pollutants other than toxic pollutants, if the applicant demonstrates at such hearing that (whether or not technology or other alternative control strategies are available) there is no reasonable relationship between the economic and social costs and the benefits to be obtained (including attainment of the objective of this Act) from achieving such limitation.

"(B) The Administrator, with the concurrence of the State, may issue a permit which modifies the effluent limitations required by subsection (a) of this section for toxic pollutants for a single period not to exceed five years, if the applicant demonstrates to the satisfaction of the Administrator that such modified requirements (1) will represent the maximum degree of control within the economic capability of the owner and operator of the source, and (2) will result in reasonable further progress beyond the requirements of section 301(b)(2) toward the requirements of subsection (a) of this section.".

(f) Section 304 of the Clean Water Act is amended by adding the following new subsection:

"(l) Within twelve months of the date of enactment of the Clean Water Act Amendments of 1985, and biennially thereafter, the Administrator shall publish in the Federal Register a plan which shall:

"(A) establish a schedule for the annual review and revision of promulgated effluent guidelines, in accordance with subsection (b) of this section;

"(B) identify categories of sources discharging toxic or nonconventional pollutants for which guidelines under subsection (b)(2) of this section and section 306 have not previously been published; and

"(C) establish a schedule for promulgation of effluent guidelines for categories identified in subparagraph (B), under which promulgation of such guidelines shall be no later than four years after the date of enactment for categories identified in the first published plan or three years after the publication of the plan for categories identified in later published plans.

"(2) The Administrator shall provide for public review and comment on the plan prior to final publication.".

INDIRECT DISCHARGE OF CONVENTIONAL POLLUTANTS

SEC. 108. Section 402 of the Clean Water Act is amended by adding at the end thereof the following new subsection:

"(m) In issuing a permit under this section, the Administrator shall not require pretreatment by dischargers of conventional pollutants identified pursuant to section 304(b)(4) of this Act as a substitute for municipal treatment adequate to meet the requirements of a permit issued under this section for a treatment works (as defined in section 212 of this Act) which is publicly owned if such discharger is in compliance with all applicable requirements of local pretreatment programs approved under subsection (b)(8) of this section. Nothing in this subsection shall affect the Administrator's authority under sections 307 and 309 of this Act, affect State and local authority under sections 307(b)(4) and 510 of this Act, relieve such treatment works of its obligations to meet requirements established under this Act, or preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.".

CIVIL AND CRIMINAL PENALTIES

SEC. 109. (a) Section 309(d) is amended by—

(1) inserting ", or any requirement imposed in a pretreatment program approved under section 402(a)(3) and (b)(8) of this Act," immediately after "section 404 of this Act by a State";

(2) deleting "$10,000 per day of such violation" and substituting "$25,000 per day for each violation";

(3) adding the following at the end thereof: "In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith

efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require.".

(b) No State shall be required to modify a permit program approved or submitted under section 402 of the Clean Water Act as a result of the amendment made by subsection (a) of this section before July 1, 1987.

(c) Section 404(s) of the Clean Water Act is amended by striking paragraph (4), by redesignating paragraph (5) as paragraph (4), and in redesignating paragraph (4), by—

(1) deleting "$10,000 per day of such violation" and substituting "$25,000 per day for each violation";

(2) adding the following at the end thereof: "In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require.".

(d) Section 309 of the Clean Water Act is amended by adding a new subsection (g) as follows:

"(g)(1) ADMINISTRATIVE PENALTIES.—In addition to any other relief provided, whenever on the basis of any information available the Administrator finds that any person has violated sections 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or has violated any permit condition or limitation implementing any of such sections in a permit issued under sections 402 of this Act by him or by a State, or in a permit issued under section 404 by a State or the Secretary of the Army, or any requirement imposed in a pretreatment program approved under section 402(a)(3) and (b)(8) of this Act, the Administrator may, after notice to the State in which the violation occurs, issue an order assessing a civil penalty of not more than $10,000 per day for each violation, up to a maximum administrative penalty of $125,000.

"(2) The authority provided in paragraph (1) of this subsection shall expire on September 30, 1990.

"(3) PROCEDURE.—(A) A civil penalty assessed by the Administrator under this subsection shall be by an order made after opportunity (provided in accordance with this subparagraph) for a hearing. Before issuing the order, the Administrator shall give to the person to be assessed a civil penalty written notice of the Administrator's proposal to issue such order and the opportunity to request, within thirty days of the date the notice is received by such person, a hearing on the proposed order. Such hearing shall not be subject to section 554 or 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.

"(B) The Administrator shall provide public notice of and reasonable opportunity to comment on any proposed assessment.

"(C) Any citizen who comments on a proposed assessment under subparagraph (B) shall be given notice of any hearing held under this subsection and of any order assessing a penalty. In any hearing held under subparagraph (A), such citizen shall have a reasonable opportunity to be heard and to present evidence. If no hearing is held prior to issuance of the order assessing the penalty, then upon presentation by such citizen, within thirty days of issuance of the order, of evidence that such order was inadequate or improper, the Administrator shall set aside such order immediately and provide a hearing in accordance with subparagraph (A) on the proposed order.

"(D) Any order issued under this subsection shall become final thirty days following its issuance unless an appeal is taken pursuant to paragraph (6) or the order is set aside pursuant to subparagraph (C).

"(4) CONTENT OF ORDER.—In determining the amount of a civil penalty, the Administrator shall take into account the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require.

"(5) EFFECT OF ORDER.—(A) Action taken by the Administrator pursuant to this subsection shall not affect or limit the Administrator's authority to enforce any provision of this Act: *Provided, however,* That any violation with respect to which the Administrator has commenced and is diligently prosecuting an action under this subsection, or for which the Administrator has issued a final order not subject to further judicial review and the violator paid a penalty assessed under this subsection, shall not be the subject of a civil penalty action under section 309(d), section 311(b), or section 505 of this Act; *Provided further,* That the foregoing limitation on civil penalty actions under section 505 of this Act shall not apply with respect to any violation for which (i) a civil action under section 505(a)(1) of this Act has been filed prior to commencement of an action under this subsection, or (ii) a notice of violation under section 505(b)(1) of this Act has been given prior to commencement of an action under this subsection and an action under section 505(a)(1) of this Act is filed prior to 120 days after such notice is given.

"(B) Nothing in this subsection shall change the procedures now existing under other subsections of section 309 of this Act for issuance and enforcement of orders by the Administrator.

"(C) No action by the Administrator pursuant to this subsection shal affect any person's obligation to comply with any section of this Act or with the terms and conditions of any permit issued pursuant to section 402 or 404 of this Act.

"(6) JUDICIAL REVIEW.—Any person against whom a civil penalty order is issued or who commented on a proposed assessment pursuant to paragraph (3) may file an appeal of such order in the United States district court for the District of Columbia or in the district in which the violation is alleged to have occurred. This appeal may only be filed within the thirty-day period beginning on the date the civil penalty order is issued. Appellant shall simultaneously send a copy of the appeal by certified mail to the Administrator and to the Attorney General. The Administrator shall promptly file in such court a certified copy of the record on which the order was issued. The district court shall not set aside or remand such order unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator's assessment of the penalty constitutes an abuse of discretion and shall not impose additional civil penalties for the same violation unless the Administrator's assessment of the penalty constitutes an abuse of discretion.

"(7) COLLECTION.—If any person fails to pay an assessment of a civil penalty—

"(A) after an order is final under paragraph (3), or

"(B) after a court in an action brought under paragraph (6) has entered a final judgment in favor of the Administrator,

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus costs, attorneys' fees, and interest at currently prevailing rates from the date of the final order or the date of such final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

"(8) SUBPOENA.—The Administrator may, in connection with administrative proceedings under this subsection, issue subpoenas compelling the attendance and testimony of witnesses and subpoenas duces tecum, and may request the Attorney General to bring an action to enforce any subpoena under this section. The district courts shall have jurisdiction to enforce such subpoenas and impose sanctions.".

(e) Section 309(c) of the Clean Water Act is amended to read as follows:

"(c)(1) Any person who (A) negligently violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(a)(3) and (b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, or who (B) negligently introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage, or, other than in compliance with all applicable Federal, State or local requirements or permits, causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State, shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both.

"(2) Any person who (A) knowingly violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, or who (B) knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage, or, other then in compliance with all applicable Federal, State or local requirements or permits, causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State, shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than three years, or by both.

"(3)(A) Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than fifteen years, or both. A defendant that is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than $1,000,000.

"(B) For the purpose of subparagraph (A) of this paragraph—

"(i) In determining whether a defendant who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury—

"(I) the person is responsible only for actual awareness or actual belief that he possessed; and

"(II) knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant:

Provided, That in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information.

"(ii) It is an affirmative defense to prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

"(I) an occupation, a business, or a profession; or

"(II) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent. The defendant may establish an affirmative defense under this subparagraph by a preponderance of the evidence.

"(iii) The term 'organization' means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

"(iv) The term 'serious bodily injury' means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

"(4) Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or by both.

"(5) If a conviction is for a violation of paragraph (1), (2), (3), or (4) of this subsection committed after a first conviction of such person under the same paragraph, the maximum punishment under the respective paragraph shall be doubled with respect to both fine and imprisonment.

"(6) For the purpose of paragraphs (1), (2), (3), and (4) the term 'person' shall mean, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.

"(7) For the purpose of paragraphs (1) and (2), the term 'hazardous substance' shall mean (A) any substance designated pursuant to section 311(b)(2)(A) of this Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of this Act, and (E) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.".

PARTIAL NPDES PROGRAM APPROVAL

SEC. 110. (a) Section 402(b) of the Clean Water Act is amended by—

(1) inserting ", or part of a permit program in accordance with paragraph (10) of this subsection," immediately after "its own permit program" in the first full sentence; and

(2) adding at the end thereof the following new paragraph:

"(10) In the event a Governor submits a plan to administer part of a permit program, the Administrator may approve such plan upon a showing that—

"(A)(i) the plan provides for administration of permit program components which represent a significant and identifiable part of the State program authorized by this section; and

"(ii) the plan provides for and the State agrees to make all reasonable efforts to assume administration of the remainder of the program by a specified future date not to exceed five years from submission of the State's initial plan; or

"(B)(i) the plan provides for administration of a permit program for one or more discharge categories such as Federal facilities, municipal or industrial categories, or any other category of dischargers which represent a significant and identifiable part of the permit program in the State; and "(ii) the plan covers all categories of discharges under the jurisdiction of the State agency or department responsible for administering the plan and represents a complete permit program for all categories of discharges contained in the plan. For purposes of the preceding sentence, 'a complete permit program,' means one for which adequate authority exists to carry out each of the activities listed in paragraphs (1) through (9) of this subsection.".

(b) Section 402(c)(1) of the Clean Water Act is amended by striking "as to those navigable waters" and inserting in lieu thereof "as to those activities and discharges".

(c) Section 402(c) of the Clean Water Act is amended by adding a new paragraph (4) as follows:

"(4) In the event a determination is made (A) by a State to return administration of the program to the Administrator or (B) by the Administrator to withdraw approval pursuant to paragraph (3) of this subsection, return of administration or withdrawal of approval may only be made of the entire program currently being administered by the State.".

JUDICIAL REVIEW AND AWARD OF FEES

SEC. 111. (a) Section 509(b)(1) of the Clean Water Act is amended by (1) striking the phrase "transacts such business" and inserting in lieu thereof, "transacts business which is directly affected by such action"; and (2) striking "ninety" and "ninetieth" and inserting in lieu thereof "one hundred and twenty" and "one hundred and twentieth", respectively.

(b) Section 509(b) of the Clean Water Act is amended by adding at the end thereof the following new paragraphs:

"(3)(A) If applications for review of the same agency action have been filed under paragraph (1) of this subsection in two or more Circuit Courts of Appeals of the United States and the Administrator has received written notice of the filing of one or more applications within thirty days or less after receiving written notice of the filing of the first application, then the Administrator shall promptly advise in writing the Administrative Office of the United States Courts that applications have been filed in two or more Circuit Courts of Appeals of the United States, and shall identify each court for which he has written notice that such applications have been filed within thirty days or less of receiving written notice of the filing of the first such application. Pursuant to a system of random selection devised for this purpose, the Administrative Office thereupon shall, within three business days of receiving such written notice from the Administrator, select the court in which the record shall be filed from among those identified by the Administrator. Upon notification of such selection, the Administrator shall promptly file the record in such court. For the purpose of review of agency action which has previously been remanded to the Administrator, the record shall be filed in the Circuit Court of Appeals of the United States which remanded such action.

"(B) Where applications have been filed under paragraph (1) of this subsection in two or more Circuit Courts of Appeals of the United States with respect to the same agency action and the record has been filed in one of such courts pursuant to paragraph (3)(A), the other courts in which such applications have been filed shall promptly transfer such applications to the Circuit Court of Appeals of the United States in which the record has been filed. Pending selection of a court pursuant to paragraph (3)(A), any court in which an application has been filed under paragraph (1) of this subsection may postpone the effective date of the agency action until fifteen days after the Administrative Office has selected the court in which the record shall be filed.

"(C) Any court in which an application with respect to any agency action has been filed under paragraph (1) of this subsection, including any court selected pursuant to paragraph (3)(A), may transfer such application to any other Circuit Court of Appeals of the United States for the convenience of the parties or otherwise in the interest of justice.

"(4) In any judicial proceeding under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party whenever it determines that such award is appropriate.".

(c) Section 505(d) of the Clean Water Act is amended by inserting "prevailing or substantially prevailing" before "party" in the first sentence thereof.

NONPOINT SOURCE POLLUTION

SEC. 112. (a) Title III of the Clean Water Act is amended by adding the following new section:

"NONPOINT SOURCE POLLUTION MANAGEMENT PROGRAM

"SEC. 319. (a)(1) Each State, by itself or in combination with adjacent States, shall, after notice and opportunity for public comment, submit to the Administrator, within eighteen months after the date of enactment of the Clean Water Act Amendments of 1985, a proposed nonpoint source pollution management program which shall—

"(A) identify those waters within its boundaries which without additional action to control nonpoint sources of pollution cannot reasonably be expected to attain or maintain (i) applicable water quality standards, or (ii) the goals and requirements of the Act;

"(B) designate categories or subcategories of nonpoint sources of pollutants or, where appropriate, particular nonpoint sources, that contribute significant pollution loadings to the waters identified under subparagraph (A);

"(C) identify best management practices which will be undertaken to reduce pollutant loadings resulting from each category, subcategory or particular nonpoint source designated under subparagraph (B), taking into account the impact of the proposed practice on ground water quality;

"(D) identify programs (including, as appropriate, nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) to achieve implementation of the best management practices by the categories, subcategories, and particular nonpoint sources designated under subparagraph (B);

"(E) include a schedule containing annual milestones for (i) utilization of the program implementation methods identified in subparagraph (D), and (ii) implementation of the best management practices identified in subparagraph (C) by the categories, subcategories, or particular nonpoint sources designated under subparagraph (B). Such schedule shall provide for utilization of the program implementation methods and implementation of best management practices at the earliest practicable date;

"(F)(i) include a statement from the attorney general of such State or States (for the attorney for those State water pollution control agencies which have independent legal counsel) that the laws of such State or States, as the case may be, provide adequate authority to carry out the described program, or what additional authorities would be necessary to do so, and (ii) if this statement identifies additional needed authorities, include a schedule and commitment by the State to seek such authorities as expeditiously as practicable; and

"(G) include an identification of Federal financial assistance programs and Federal development projects for which the State will review individual assistance applications or development projects for their effect on water quality pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983, to determine whether such assistance applications or development projects would be consistent with and further the purposes and objectives of the program prepared under this subsection. For the purposes of this paragraph, identification shall not be limited to the assistance programs or development projects subject to the Executive Order 12372 but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the State's nonpoint source pollution management program.

"(2) In developing the nonpoint source management program required by this section, the State (A) may rely upon information developed pursuant to sections 208, 303(e), 304(f), 305(b), and 314, and other information as appropriate, and (B) may utilize appropriate elements of the waste treatment management plans developed pursuant to section 208(b), to the extent such elements are consistent with and fulfill the requirements of this section.

"(3) In developing and implementing the management program described in this subsection, a State may make use of local agencies or organizations.

"(b)(1) Within six months of the date of receipt of a proposed nonpoint source management program, the Administrator shall, after notice and opportunity for public comment, make a determination whether the State's proposed management program meets the requirements of subsection (a)(1) of this section.

"(2) If the Administrator determines that the proposed management program does not meet the requirements of subsection (a)(1) of this section, he shall within six months of receipt of the proposed program notify the State of any revisions or modifications necessary to obtain approval. The State shall thereupon have an additional three months to submit its revised management program and the Administrator shall approve or disapprove such revised program within three months of receipt.

"(3) Pursuant to paragraph (1) or (2) of this subsection, the Administrator shall approve those State management programs that he determines meet the requirements of subsection (a)(1) of this section.

"(4) If the Administrator fails to approve the State management program pursuant to paragraph (1) of this subsection or fails to notify the State of necessary revisions pursuant to paragraph (2) of this subsection within six months of receipt of the State program, or if he fails to approve or disapprove the program pursuant to paragraph (2) of this subsection within three months of receipt of the revised program, the program shall be deemed to have been approved by the Administrator.

"(c) If a State fails to submit a nonpoint source pollution management program that the Administrator determines meets the requirements of subsection (a)(1) of this section, the Administrator shall notify such State, and within thirty months after the date of enactment of the Clean Water Act Amendments of 1985, after consultation with appropriate Federal and State agencies and other interested persons, carry out the requirements of subsections (a)(1) (A) and (B) of this section for such State. Upon completion of this requirement, the Administrator shall report to Congress on his actions pursuant to this section.

"(d)(1) The Administrator shall award grants, subject to such terms and conditions as the Administrator considers appropriate, to assist States in the implementation of management programs which have been approved pursuant to subsection (b) of this section. Such grants shall not exceed 75 per centum of the costs of implementing the program in any fiscal year and shall be made on condition that non-Federal sources provide at least 25 per centum of the costs that receive funding under this subsection.

"(2)(A) Two-thirds of the funds appropriated in any fiscal year for grants under this section shall be made available for allotment to the several States in accordance with the following table:

State	*Percentage allotment*
Alabama	1.56
Alaska	.50
Arizona	1.95
Arkansas	1.43
California	6.37
Colorado	2.19
Connecticut	.68
Delaware	.50
District of Columbia	.50
Florida	2.66
Georgia	2.04
Hawaii	.50
Idaho	1.20
Illinois	4.03
Indiana	2.07
Iowa	2.39
Kansas	2.78
Kentucky	1.32
Louisiana	1.56
Maine	.55

Maryland	1.03
Massachusetts	1.25
Michigan	2.67
Minnesota	2.43
Mississippi	1.40
Missouri	2.44
Montana	2.46
Nebraska	2.26
Nevada	1.78
New Hampshire	.50
New Jersey	1.62
New Mexico	1.93
New York	4.22
North Carolina	1.90
North Dakota	2.14
Ohio	3.14
Oklahoma	2.05
Oregon	1.75
Pennsylvania	2.97
Rhode Island	.50
South Carolina	1.09
South Dakota	1.94
Tennessee	1.50
Texas	8.08
Utah	1.36
Vermont	.50
Virginia	1.60
Washington	1.58
West Virginia	.60
Wisconsin	1.90
Wyoming	1.39
Guam	.10
Northern Marianas	.10
Pacific Trust Territories	.10
Puerto Rico	.72
Samoa	.10
Virgin Islands	.10
TOTAL	100.00

"(B) One-third of the funds appropriated in any fiscal year for grants under this section shall be made available to the Administrator who shall make grants in response to applications from States if the Administrator determines such grants are necessary and appropriate to assist such States in—

"(i) controlling particularly difficult or serious nonpoint source pollution problems, including, but not limited to, problems resulting from mining activities;

"(ii) implementing innovative methods or practices for controlling nonpoint sources of pollution, including both regulatory or nonregulatory programs where the Administrator deems appropriate;

"(iii) controlling interstate nonpoint source pollution problems;

"(iv) assessing the relationship between nonpoint source pollution and ground water contamination; or

"(v) providing financial assistance for implementation by an Indian tribe, within the reservation, of an approved management program: *Provided,* That any such Indian tribe shall be subject to all terms and conditions of this section applying to a State. Financial assistance to any one reservation under this clause shall not exceed one-third of 1 per centum of the total amount appropriated for grants for each year.

"(3) The funds allotted to the States pursuant to paragraph (2)(A) of this subsection for a fiscal year shall remain available for obligation for the fiscal year for which appropriated. The amount of any such allotments not obligated by the end of such fiscal year and any unobligated funds remaining under paragraph (2)(B) of this subsection shall be reallotted by the Administrator for the next fiscal year on the basis of the table in paragraph (2)(A).

"(4) States may use funds from grants made pursuant to this section for financial assistance to persons only to the extent that such assistance is related to the costs of demonstration projects.

"(5) No grant shall be made to a State under this section unless the Administrator determines, on the basis of information provided by the State and from other relevant sources, that the State is implementing the program satisfactorily in terms of the requirements and objectives of this section.

"(6) No grant shall be made under this section to any State in any fiscal year in which the expenditure of non-Federal funds by such State for purposes comparable to the activities assisted by this section are less than the average level of such expenditures in the two fiscal years of such State next preceding the date of enactment of the Clean Water Act Amendments of 1985.

"(7) The Administrator may request such information, data, and reports as he may deem necessary to make the determination of continuing eligibility for grants under this section.

"(8) For the purpose of this section, there are authorized to be appropriated, to remain available until expended,

$70,000,000 for the fiscal year ending September 30, 1986, $100,000,000 for the fiscal year ending September 30, 1987, and $130,000,000 for the fiscal year ending September 30, 1988.

"(e) Each State shall report to the Administrator on an annual basis concerning (1) its progress in meeting the schedule of milestones submitted pursuant to subsection (a)(1)(E) of this section, and (2) to the extent that appropriate information is available, reductions in nonpoint source pollutant loading and improvements in water quality resulting from implementation of the management program.

"(f) The Administrator shall—

"(1) transmit to the Office of Management and Budget and the appropriate Federal departments and agencies a list of those assistance programs and development projects identified by each State under subsection (a)(1)(G) for which individual assistance applications and projects will be reviewed pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983. Beginning not later than sixty days after receiving notification by the Administrator, each Federal department and agency shall modify existing regulations to allow States to review individual development projects and assistance applications under the identified Federal assistance programs and shall accommodate, according to the requirements and definitions of Executive Order 12372, as in effect on September 17, 1983, the concerns of the State regarding the consistency of such applications or projects with the State nonpoint source pollution management program;

"(2) collect and make available, through publications and other appropriate means, information pertaining to management practices and implementation methods, including, but not limited to, (A) information concerning the costs and relative efficiencies of best management practices for reducing nonpoint source pollution; and (B) available data concerning the relationship between water quality and implementation of various management practices to control nonpoint sources of pollution; and

"(3) submit to the Congress, within thirty-six months of enactment of the Clean Water Act Amendments of 1985, a report which on the basis of information submitted by the States pursuant to subsections (a) and (e) of this section, and other information as appropriate:

"(A) describes the management programs being implemented by the States by types and amount of affected waters, categories and subcategories of nonpoint sources, and types of best management practices being implemented;

"(B) describes the experiences of the States in adhering to schedules and implementing best management practices;

"(C) describes the amount and purpose of grants awarded pursuant to subsection (d) of this section;

"(D) identifies, to the extent that information is available, the progress made in reducing pollutant loads and improving water quality in the waters of the United States; and

"(E) indicates what further actions need to be taken to attain and maintain in those waters (i) applicable water quality standards and (ii) the goals and requirements of the Act.".

(b) Section 304(k)(1) of the Clean Water Act is amended by inserting after the word "Act" the following: "and nonpoint source pollution management programs approved under section 319 of this Act.".

(c) Section 205(j) of the Clean Water Act is amended by adding the following new paragraph:

"(5) In addition to the sums reserved under paragraph (1), the Administrator shall reserve each fiscal year for each State 1 per centum of the sums allotted and available for obligation to such State under this section for each fiscal year beginning on or after October 1, 1986, or $100,000, whichever is greater, for the purpose of carrying out section 319 of this Act. Sums so reserved in a State in any fiscal year for which such State does not request the use of such sums, to the extent such sums exceed $100,000, may be used by such State for other purposes under this title.".

NATIONAL ESTUARY PROGRAM

SEC. 113. Title III of the Clean Water Act is amended by adding at the end thereof the following new section:

"NATIONAL ESTUARY PROGRAM

"SEC. 320. (a)(1) Whenever the Administrator determines that the attainment and maintenance of the chemical, physical, and biological integrity of an estuary requires the interstate or international control of sources of pollution to supplement existing controls, the Administrator shall convene, for a period not to exceed five years, an estuarine management conference, to—

"(A) assess trends in water quality, natural resources, and uses of the estuary;

"(B) collect, characterize, and assess data on toxics, nutrients, and natural resources within the estuarine zone to identify the causes of environmental problems;

"(C) develop the relationship between the inplace loads and point and nonpoint loadings of pollutants to the estuarine zone and the potential uses of the zone, water quality, and natural resources;

"(D) develop a comprehensive conservation and management plan that recommends priority corrective actions and compliance schedules addressing point and nonpoint sources of pollution to restore and maintain the chemical, physical, and biological integrity of the estuary, including restoration and maintenance of water quality, a balanced indigenous population of shellfish, fish and wildlife, and recreational activities in the estuary, and assure that the designated uses of the estuary are protected;

"(E) develop plans for the coordinated implementation of the plan by the States as well as Federal and local agencies participating in the conference;

"(F) monitor the effectiveness of actions taken pursuant to the plan; and

"(G) review any Federal financial assistance program or federal development project subject to the requirements of Executive Order 12372, as in effect on September 17, 1983, to determine whether such assistance program or project would be consistent with and further the purposes and objectives of any plan prepared under this section. For purposes of this subparagraph, these programs and projects shall not be limited to the assistance programs or development projects subject to Executive Order 12372, but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of any plan developed pursuant to this section.

"(b) The members of a management conference convened under this section shall include, at a minimum, the Administrator and representatives of—

"(1) each State and foreign nation located in whole or in part in the estuarine zone of the estuary for which the conference is convened;

"(2) international, interstate, or regional agencies having jurisdiction over all or a significant part of the estuary;

"(3) each interested Federal agency, as determined appropriate by the Administrator;

"(4) local governments within the estuarine zone, as determined appropriate by the Administrator; and

"(5) affected industries, public and private educational institutions and the general public in the estuarine zone.

"(c) Prior to developing a comprehensive conservation and management plan under this section, the management conferees shall survey and use existing reports, data, and studies as well as local master or regional plans relating to the estuary that have been developed by or made available to Federal, interstate, international, State, or local agencies.

"(d)(1) Not later than ninety days after the completion of a conservation and management plan, the Administrator shall, if the plan satisfies the purposes of this section and the affected Governor or Governors concur, approve such plan.

"(2) Upon approval of a conservation and management plan under this section, funds authorized to be appropriated under titles II and VI and section 319 of this Act may be used in accordance with the applicable requirements of this Act, to assist States with the implementation of such plan.

"(e) There are authorized to be appropriated to the Administrator not to exceed $12,000,000 per fiscal year for each of the fiscal years 1986, 1987, 1988, and 1989, for:

"(1) expenses related to the administration of management conferences under this section, not to exceed 10 per centum of the amount appropriated under this paragraph;

"(2) grants to State, interstate or regional water pollution control agencies for research, surveys, studies, monitoring, modeling, and other technical work necessary for the development of a conservation and management plan under this section: *Provided,* That such grants shall not exceed 75 per centum of the costs of such technical work and shall be made on condition that non-Federal sources provide at least 25 per centum of the costs that receive funding under this paragraph; and

"(3) the costs of monitoring the implementation of a conservation and management plan. Such monitoring shall be done by the management conference or, in any case in which the conference has expired or been terminated, by the Administrator.

"(f) Any State, interstate, or regional agency that receives a grant under subsection (e) shall report to the Administrator not later than eighteen months after receipt of such grant and biennially thereafter on the progress being made under this section.

"(g) For the purposes of this section, the terms 'estuary' and 'estuarine zone' shall have the same meanings such terms have in section 104(n)(4) of this Act, except that the term 'estuarine zone' shall include those portions of tributaries draining into the estuary up to the historic height of migration of anadromous fish or the historic head of tidal influence, whichever is higher.".

STORMWATER RUNOFF FROM OIL AND GAS OPERATIONS

SEC. 114. Section 402(l) of the Clean Water Act is amended by inserting "(1)" after "(l)" and by adding the following new paragraph:

"(2) The Administrator shall not require a permit under this section nor impose effluent limitations, nor shall the Administrator directly or indirectly require any State to require such a permit or impose such limitations, for discharges of stormwater runoff from oil or gas exploration, production, processing, or treatment operations, composed entirely of flows from conveyances or systems of conveyances (including pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and not contaminated with process wastes, toxic pollutants above background levels, hazardous substances in excess of reportable quantities, or oil or grease in excess of reportable quantities.".

ANTI-BACKSLIDING

SEC. 115. (a) Section 402 of the Clean Water Act is amended by adding the following new subsection:

"(n) In the case of effluent limitations established on the basis of subsection (a)(1)(B) of this section, a permit may not be renewed, reissued or modified solely on the basis of effluent guidelines promulgated under section 304(b) subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit. If the source has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, the limitations in the renewed, reissued or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance or modification). In the case of effluent limitations established on the basis of section 301(b)(1)(C) or section 303(d) or (e), a permit may be renewed, reissued, or modified on the basis of subsequently revised waste load allocations under section 303(d) to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit only in compliance with section 303(d)(5).".

(b) Section 402(a)(1) of the Clean Water Act is amended by inserting "(A)" after "either" and by inserting "(B)" after "this Act, or".

(c) Section 303(d) of the Clean Water Act is amended by adding the following new paragraph:

"(5)(A) For waters identified in paragraph (1)(A) where the applicable water quality standard has not yet been attained, any effluent limitation based on a total maximum daily load or other waste load allocation established under this section may be revised only if (i) the cumulative effect of all such revised effluent limitations based on such total maximum daily load or waste load allocation will assure the attainment of such water quality standard, or (ii) the designated use which is not being attained is removed in accordance with regulations established under this section.

"(B) For waters identified in paragraph (1)(A) where the quality of such waters equals or exceeds levels necessary to protect the designated use for such waters, any effluent limitation based on a total maximum daily load or other waste load allocation established under this section, or other permitting standard, may be revised only if such revision is subject to and consistent with the antidegradation policy established under this section.".

SEWAGE SLUDGE

SEC. 116. (a) Section 405(d) of the Clean Water Act is amended by inserting "(1)" after "(d)", by striking "(1)", "(2)" and "(3)" and inserting in lieu thereof "(A)", "(B)" and "(C)", and by adding the following new paragraphs:

"(2)(A)(i) Not later than April 1, 1986, the Administrator shall identify those toxic pollutants which, on the basis of available information on their toxicity, persistence, concentration, mobility, or potential for exposure, may be present in sewage sludge in concentrations which may adversely affect public health or the environment, and propose regulations specifying acceptable management practices for sewage sludge containing each such toxic pollutant and establishing numerical limitations for each such pollutant for each use identified under paragraph (1)(A).

"(ii) Not later than March 1, 1987, and after opportunity for public hearing, the Administrator shall promulgate the regulations required by subparagraph (A)(i).

"(B)(i) Not later than February 1, 1987, the Administrator shall identify those toxic pollutants not identified under subparagraph (A)(i) which may be present in sewage sludge in concentrations which may adversely affect public health or the environment, and propose regulations specifying acceptable management practices for sewage sludge containing each such toxic pollutant and establishing numerical limitations for each pollutant for each such use identified under paragraph (1)(A).

"(ii) Not later than December 15, 1987, the Administrator shall promulgate the regulations required by subparagraph (B)(i).

"(C) The management practices and numerical criteria established under subparagraphs (A) and (B) shall be adequate to protect public health and the environment from any reasonably anticipated adverse effects of each pollutant. Such regulations shall require compliance no later than twelve months after their publication, unless such regulations require the construction of new pollution control technology, in which case the regulations shall require compliance as expeditiously as practicable but in no case later than two years from the date of their publication.

"(D) For purposes of this subparagraph, if, in the judgment of the Administrator, it is not feasible to prescribe or enforce a numerical limitation for a pollutant identified under this paragraph, the Administrator may instead promulgate a design, equipment, management practice, or operational standard, or combination thereof, which in the judgment of the Administrator is adequate to protect public health and the environment from any reasonably anticipated adverse effects of such pollutant.

"(E) Prior to the promulgation of the regulations required by subparagraphs (A) and (B), the Administrator shall impose conditions in permits issued to publicly owned treatment works under section 402 of this Act or take such other measures as the Administrator deems appropriate to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge.

"(F) Nothing in this section authorizes the establishment of any requirement or time for compliance which is less stringent than required by any other law.".

(b) Section 405(e) of the Clean Water Act is amended to read as follows:

"(e) The determination of the manner of disposal or use of sludge is a local determination, except that it shall be unlawful for any person to dispose of sludge from a publicly owned treatment works or any other treatment works treating primarily domestic sewage (but not including privately owned treatment works operated in conjunction with industrial manufacturing and processing facilities) for any use for which regulations have been established pursuant to subsection (d) of this section, except in accordance with such regulations.".

(c) Section 405 of the Clean Water Act is further amended by adding at the end thereof the following:

"(f)(1) Any permit issued under section 402 of this Act to a publicly owned treatment works or any other treatment works treating primarily domestic sewage (but not including privately owned treatment works operated in conjunction with industrial manufacturing and processing facilities) shall include requirements for the use and disposal of sludge that implement the regulations established pursuant to subsection (d) of this section, unless such requirements have been included in a permit issued under the appropriate provisions of subtitle C of the Solid Waste Disposal Act, part C of the Safe Drinking Water Act, the Marine Protection, Research and Sanctuaries Act of 1972, or the Clean Air Act, or under State permit programs approved by the Administrator, where the Administrator determines that such programs assure compliance with any applicable requirements of this section. Not later than December 15, 1985, the Administrator shall promulgate procedures for approval of State programs pursuant to this paragraph.

"(2) In the case of a treatment works described in paragraph (1) that is not subject to section 402 of this Act and to which none of the other above listed permit programs nor approved State permit authority apply, the Administrator may issue a permit to such treatment works solely to impose requirements for the use and disposal of sludge that implement the regulations established pursuant to subsection (d) of this section. The Administrator shall include in the permit appropriate requirements to assure compliance with the regulations established pursuant to subsection (d) of this section. The Administrator shall establish procedures for issuing permits pursuant to this paragraph.".

(d)(1) Section 308(a)(4) of the Clean Water Act is amended by inserting "405," before the phrase "and 504".

(2) Section 505(f) of the Clean Water Act is amended by striking "or" where it appears before "(6)", and inserting before the period a semicolon and the following: "or (7) a regulation under section 405(d) of this Act,".

(3) Section 509(b)(1)(E) of the Clean Water Act is amended by striking "or 306" and inserting in lieu thereof "306, or 405".

INTERSTATE DISPUTE RESOLUTION

SEC. 117. (a) Section 402(d)(2) of the Clean Water Act is amended by inserting "(A)" after "(2)", by striking "(A)" and "(B)" and inserting in lieu thereof "(i)" and "(ii)" respectively, and by adding the following subparagraph:

"(B) In the case of the failure of any State to accept the recommendations of another State whose waters may be affected by the issuance of a permit, submitted in accordance with subsection (b)(5), the Administrator shall determine within 90 days following written objection to the Administrator by the State whose recommendations were not accepted, whether any substantial violation of a water quality requirement (including any standard) of the affected State or adverse effect on public health of the affected State will result from the issuance of such permit. If the Administrator so determines, the Administrator shall object to the issuance of such permit or provide specific modifications to such permit. Any such determination shall be provided in writing to the affected State and such determination or such objection shall be reviewable in the appropriate Circuit Court of Appeals under section 509(b) of this Act as the issuance or denial of a permit under section 402.".

(b) Section 402(b)(1) of the Clean Water Act is amended by adding the following:

"(E) shall be reconsidered for termination or modification at any time a State other than that in which the source is located provides notice that the permitted discharge is causing a substantial violation of a water quality requirement (including any standard) of such State or adversely affecting the public health of such State and seeks a modification of such permit;".

(c) Section 511 of the Clean Water Act is amended by adding a new subsection (e) as follows:

"(e) Any State or municipality the water quality of which is adversely affected by pollutants from another State may petition the Administrator who, upon determining on the record after opportunity for Agency hearing pursuant to 5 U.S.C. 554, 556, and 557 that such pollution is causing a substantial violation of a water quality requirement (including any standard) of such State or adversely affecting the public health of such State, shall issue an order within 90 days restraining any person causing or contributing to such pollution or providing such other relief as is appropriate, taking into account the goals and requirements of this Act and other equitable considerations. In no case shall such order or other relief based solely on this subsection supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws. This subsection shall not apply in any case in which section 402(d)(2)(B) or section 402(b)(1)(F) is available, nor to any pollution which is subject to the Colorado River Salinity Control Act of 1974, nor to any water pollution which results from emissions from mobile or stationary sources which are regulated under the Clean Air Act.".

PRESERVATION OF OTHER RIGHTS

SEC. 118. (a) Section 505(e) of the Clean Water Act is amended by inserting "(1)" after "(e)" and by adding the following new paragraphs:

"(2) Nothing in this Act shall affect or modify in any way the liabilities of any person under other Federal statutes for damages caused by noncompliance with any requirement of this Act or any permit issued under this Act.

"(3) In any case involving the application of State common or statutory law to an instance where a discharge of pollutants arising in another State is alleged to have an adverse effect on the public health or welfare or the attainment of any water quality requirement of such State or municipality, a State or municipality shall be considered a citizen of such State for the purpose of filing an action in, or seeking removal to, a Federal district court to section 1332 of title 28, United States Code.".

(b) The amendments made by this section shall not apply in any dispute involving claims of interstate water pollution, wherein a State or municipality is the defending party, which is pending as of the enactment of this Act (or has been finally adjudicated), and on which the Supreme Court of the United States has rendered a decision.

AD VALOREM TAX DEDICATION

SEC. 119. For the purposes of complying with section 204(b)(1) of the Clean Water Act, the ad valorem tax user charge system of the Town of Hampton, New Hampshire, shall be deemed to have been dedicated as of December 27, 1977. The Administrator of the Environmental Protection Agency shall review such ad valorem tax user charge system for compliance with the remaining requirements of section 204(b)(1) and related regulations of the Agency.

LIMITATION ON DISCHARGE OF RAW SEWAGE BY NEW YORK CITY

SEC. 120. (a)(1) If the wastewater treatment plant identified in the consent decree as the North River plant has not achieved advanced preliminary treatment as required under the terms of the consent decree by August 1, 1986, the city of New York shall not discharge raw sewage from the drainage area of such plant (as defined in the consent decree) into navigable waters after such date in an amount which is greater for any thirty-day period than an amount equal to thirty times the average daily amount of raw sewage discharged from such drainage area during the twelve-month period ending on the earlier of the date on which such plant becomes operational or March 15, 1986 (as determined by the Administrator of the Environmental Protection Agency), except as provided in subsection (b).

(2) If the wastewater treatment plant identified in the consent decree as the Red Hook plant has not achieved advanced preliminary treatment as required under the terms of the consent decree by August 1, 1987, the city of New York shall not discharge raw sewage from the drainage area of such plant (as defined in the consent decree) into navigable waters after such date in an amount which is greater for any thirty-day period than an amount equal to thirty times the average daily amount of raw sewage discharged from such drainage area during the twelve-month period ending on the earlier of the date on which such plant becomes operational or March 15, 1987 (as determined by the Administrator of the Environmental Protection Agency), except as provided in subsection (b).

(b)(1) In the event of any significant interruption in the operation of the North River plant or the Red Hook plant caused by an event described in subparagraph (A), (B), or (C) of paragraph (5) occurring after the applicable deadline established under subsection (a), the Administrator of the Environmental Protection Agency shall waive the limitation of subsection (a) with respect to such plant, but only to such extent and for such limited period of time as may be reasonably necessary for the city of New York to resume operation of such plant.

(2) In the event that the volume of precipitation occurring after the applicable deadline established under subsection (a) causes the discharge of raw sewage to exceed the limitation under subsection (a), the Administrator of the Environmental Protection Agency shall waive the limitation of subsection (a) with respect to either or both such plants, but only to such extent and for such limited period of time as the Administrator determines to be necessary to take into account the increased discharge caused by such volume of precipitation.

(3) In the event that an increase in discharges from the North River drainage area constituting a violation of subsection (a)(1) is due to a random or seasonal variation, and that any sewer hookup occurring, or permit for a sewer hookup granted, after July 31, 1986, is not responsible for such violation, the Administrator of the Environmental Protection Agency shall waive the limitation of subsection (a)(1), but only to such extent and for such limited period of time as the Administrator determines to be reasonably necessary to take into account such random or seasonal variation.

(4) In the event that an increase in discharges from the Red Hook drainage area constituting a violation of subsection (a)(2) is due to a random or seasonal variation, and that any

sewer hookup occurring, or permit for a sewer hookup granted, after July 31, 1987, is not responsible for such violation, the Administrator of the Environmental Protection Agency shall waive the limitation of subsection (a)(2), but only to such extent and for such limited period of time as the Administrator determines to be reasonably necessary to take into account such random or seasonal variation.

(5) The Administrator of the Environmental Protection Agency shall extend either deadline under paragraph (1) or (2) of subsection (a) to such extent and for such limited period of time as may be reasonably required to take into account any—

(A) act of war,

(B) unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight, or

(C) other circumstances beyond the control of the city of New York, such circumstances not to include (i) the unavailability of Federal funds under section 201 of the Federal Water Pollution Control Act, (ii) the unavailability of funds from the city of New York or the State of New York, or (iii) a policy decision made by the city of New York or the State of New York to delay the achievement of advanced preliminary treatment at the North River plant or Red Hook plant beyond the applicable deadline in subsection (a).

(c) Except as otherwise provided in subsection (b), any violation of subsection (a) shall be considered to be a violation of section 301 of the Federal Water Pollution Control Act, and all provisions of such Act relating to violations of such section 301 shall apply.

(d) For purposes of this section, the "consent decree" is the consent decree entered into by the Environmental Protection Agency, the city of New York, and the State of New York, on December 30, 1982, relating to construction and operation of the North River and Red Hook wastewater treatment plants.

(e) The Administrator of the Environmental Protection Agency shall work with the city of New York to eliminate the discharge of raw sewage by such city at the earliest practicable date.

(f) Nothing in this section shall be construed as modifying the terms of the consent decree.

(g) It is the sense of the Congress that the Administrator of the Environmental Protection Agency should not agree to any further modification of the consent decree with respect to the schedule for achieving advanced preliminary treatment.

(h)(1) The provisions of this section shall remain in effect with respect to the North River drainage area until such time as the North River plant has achieved advanced preliminary treatment (as defined in the consent decree) for a period of six consecutive months.

(2) The provisions of this section shall remain in effect with respect to the Red Hook drainage area until such time as the Red Hook plant has achieved advanced preliminary treatment (as defined in the consent decree) for a period of six consecutive months.

(i) The Administrator of the Environmental Protection Agency shall promptly establish and carry out a program for the monitoring activities which may be required under subsection (a). The Administrator of the Environmental Protection Agency shall establish the methodologies, data base, and any other information required for making determinations under subsection (b) for the North River drainage area (as defined in the consent decree) by July 31, 1986, unless the requirements of subsection (h)(1) have been satisfied, and for the Red Hook drainage area (as defined by the consent decree) by July 31, 1987, unless the requirements of subsection (h)(2) have been satisfied. In carrying out such program, if the Administrator finds that a violation of subsection (a) has occurred, the Administrator shall also determine, within thirty days after such finding, whether a provision of subsection (b) applies. If the Administrator requires information from the city of New York in order to determine whether a provision of subsection (b) applies, the Administrator shall request such information. If the city of New York does not supply the information requested by the Administrator, the Administrator shall determine that subsection (b) does not apply. The city of New York shall be responsible only for such expenses as are necessary to provide such requested information. Enforcement action pursuant to subsection (c) shall be commenced at the end of such thirty days unless a provision of subsection (b) applies.

CHESAPEAKE BAY

SEC. 121. Title I of the Clean Water Act is amended by adding at the end thereof the following new section:

"CHESAPEAKE BAY

"SEC. 117. (a) The Administrator shall continue the Chesapeake Bay Program and shall establish and maintain in the Environmental Protection Agency an Office, Division, or Branch of Chesapeake Bay Programs to—

"(1) collect and make available, through publications and other appropriate means, the results of and other information pertaining to research and other activities that address the environmental quality of the Chesapeake Bay (hereinafter 'the Bay');

"(2) coordinate all Federal research projects pertaining to the Bay;

"(3) conduct research to determine the impact of sediment deposition in the Bay and to identify the sources, rates, routes, and distribution patterns of such sediment deposition; and

"(4) conduct research on the impact of natural and man-induced environmental changes on the living resources of the Bay and the relationships between such changes. Particular emphasis shall be placed on researching the impact of pollutant loadings of nutrients, chlorine, acid precipitation, dissolved oxygen, and toxic pollutants, including organic chemicals and heavy metals. Special attention shall be given to the impact of such changes on the striped bass.

"(b)(1) The Administrator shall, at the request of the Governor of a State affected by the interstate management plan developed pursuant to the Chesapeake Bay Program (hereinafter 'the plan'), make a grant for the purpose of implementing the management mechanisms contained in the plan if such State has, within one year after the date of enactment of the Clean Water Act Amendments of 1985, approved and committed to implement all or substantially all aspects of the plan. Payments for such purpose may be made to the States as hereinafter provided, subject to such terms and conditions as the Administrator considers appropriate.

"(2) A State or combination of States may elect to avail itself of the benefits of this subsection by submitting to the Administrator a comprehensive proposal to implement management mechanisms contained in the plan which shall include (A) a description of proposed abatement actions which the State commits to take within a specified time period to reduce pollution in the Bay and to meet applicable water quality standards, and (B) the estimated cost of the abatement actions proposed to be taken during the next fiscal year. If the Administrator finds that such proposal is consistent with the national policies set forth in section 101(a) of this Act and will contribute to the achievement of the national goals set forth in section 101(a) of this Act he shall approve such proposal and shall finance the costs of implementing segments of such proposal; except that Federal grants under this subsection shall not exceed 55 per centum of the costs of implementing the plan in any fiscal year and shall be made on condition that non-Federal sources provide the remainder of the cost of implementing the plan during such fiscal year.

"(3) Administrative costs in the form of salaries, overhead or indirect costs for services provided and charged against programs or projects supported by funds made available under this subsection shall not exceed in any one fiscal year 10 per centum of the annual Federal grant made to a State under this subsection.

"(c) Any State or combination of States that receives a grant under subsection (b) shall, within eighteen months after the date of receipt of a Federal grant under subsection (b) and biennially thereafter, report in conjunction with the Administrator to the Congress on progress made in implementing the interstate management plan developed pursuant to the Chesapeake Bay Program.

"(d) There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purposes of this section:

"(1) $3,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1988, to carry out subsection (a); and

"(2) $10,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1988, to carry out subsection (b).".

GREAT LAKES

SEC. 122. Title I of the Clean Water Act is further amended by adding the following new section:

"GREAT LAKES

"SEC. 118. (a) DEFINITIONS.—For the purposes of this section, the term—

"(1) 'Agency' means the Environmental Protection Agency;

"(2) 'Great Lakes' means Lake Ontario, Lake Erie, Lake Huron (including Lake St. Clair), Lake Michigan, and Lake Superior, and the connecting channels (Saint Mary's River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian Border);

"(3) 'Great Lakes System' means all the streams, rivers, lakes, and other bodies of water within the drainage basin of the Great Lakes:

"(4) 'Program Office' means the Great Lakes National Progam Office established by this section.

"(b) GREAT LAKES NATIONAL PROGRAM OFFICE.—The Great Lakes National Program Office (previously established by the Administrator) is hereby established within the Agency. The Program Office shall be headed by a Director who, by reason of management experience and technical expertise relating to the Great Lakes, is highly qualified to direct the development of programs and plans on a variety of Great Lakes issues. The Great Lakes National Program Office shall be located in a Great Lakes State.

"(c) GREAT LAKES MANAGEMENT.—The Program Office shall—

"(A) in cooperation with appropriation Federal, State, tribal, and international agencies, develop and implement specific action plans to carry out the responsibilities of the United States under the Great Lake Water Quality Agreement of 1978;

"(B) establish a Great Lakes system-wide surveillance network to monitor the water quality of the Great Lakes, with specific emphasis on the monitoring of toxic pollutants; and

"(C) serve as the liaison with, and provide information to, the Canadian members of the International Joint Commission and the Canadian counterpart to the Agency.

"(2) The Program Office shall develop, in consultation with the states, a five-year plan and program for reducing the amount of nutrients introduced into the Great Lakes. Such program shall incorporate any management program for reducing nutrient runoff from nonpoint sources established under section 319 of this Act and shall include a program for monitoring nutrient runoff into, and ambient levels in, the Great Lakes.

"(3) The Program Office shall carry out a five year study and demonstration projects relating to the control and removal of toxic pollutants in the Great Lakes, with emphasis on the removal of toxic pollutants from bottom sediments.

"(4) To the extent practicable, the Agency's annual budget submission to Congress, shall include a funding request for the Program Office as a separate budget line item.

"(5) Within ninety days after the end of each fiscal year, the Administrator shall submit to the Congress a comprehensive report which—

"(A) describes the achievements in the preceding fiscal year in implementing such agreement and shows by categories (including judicial enforcement, research, State cooperative efforts, and general administration) initiatives in such preceding fiscal year;

"(B) describes the progress made in such preceding fiscal year in implementing the system of surveillance of the water quality in the Great Lakes, with particular reference to toxic pollutants;

"(C) describes the long-term prospects for improving the condition of the Great Lakes; and

"(D) provides a comprehensive assessment of the planned efforts to be pursued in the succeeding fiscal year for implementing the Great Lakes Water Quality Agreement of 1978. The assessment shall show by categories the amount anticipated to be expended on Great Lakes water quality initiatives in the fiscal year to which the assessment relates. The assessment shall also include a report of current programs administered by other Federal agencies which make available resources to the Great Lakes management efforts.

"(d) INTERAGENCY COOPERATION.—The head of each department, agency, or other instrumentality of the Federal Government which is engaged in, is concerned with, or has authority over programs relating to research, monitoring, and planning to maintain, enhance, preserve, or rehabilitate the environmental quality and natural resources of the Great Lakes, including the Chief of Engineers of the Army, the Chief of the Soil Conservation Service, the Commandant of the Coast Guard, the Director of the Fish and Wildlife Service, and the Administrator of the National Oceanic and Atmospheric Administration shall submit an annual report to the Administrator with respect to the activities of that agency or office affecting compliance with the Great Lakes Water Quality Agreement of 1978.

"(e) RELATIONSHIP TO EXISTING FEDERAL AND STATE LAWS AND INTERNATIONAL TREATIES.—Nothing contained in this section shall be construed to affect the jurisdiction, powers, or prerogatives of any department, agency, or officer of the Federal Government or of any State government, or of any tribe, nor any powers, jurisdiction, or prerogatives of international bodies created by treaty with authority relating to the Great Lakes.

"(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the Great Lakes National Program Office for the purposes of carrying out this section not to exceed $10,000,000 per fiscal year for the fiscal years 1986, 1987, 1988, 1989, and 1990. Of such amounts—

"(1) $700,000 in each fiscal year shall be used for the program of nutrient monitoring; and

"(2) $5,000,000 in each fiscal year shall be used for demonstration projects of the feasibility of controlling and removing toxic pollutants.".

CLEAN LAKES

SEC. 123. Section 314(a) of the Clean Water Act is amended to read as follows:

"(a)(1) Each State shall prepare a report on a biennial basis which shall include—

"(A) an identification and classification according to eutrophic condition of all publicly owned lakes in such State;

"(B) a list and description of those publicly owned lakes for which uses are known to be impaired, including those lakes which are known to not meet applicable water quality standards, or which require implementation of protection programs to maintain compliance with applicable standards; and

"(C) a description of the State programs and methods to control sources of pollution of lakes and protect the quality of lakes.

"(2) The report provided for in paragraph (1) shall be included in the report required under section 305(b) of this Act.

"(3) A State must submit a report in accord with paragraph (1) in order to receive a grant under this section.".

LAKE PEND OREILLE STUDY

SEC. 124. The Administrator shall conduct a comprehensive study of the causes of increasing pollution in Lake Pend Oreille and its tributaries. In such study, the Administrator shall attempt to identify any upstream or local permitted or other discharges and the source of such discharges. In conducting this study, the Administrator should take into account any previous studies that will assist in carrying out the provisions of this subsection, and report to Congress the findings and recommendations of the study.

TITLE II—CONSTRUCTION GRANT AMENDMENTS

CONSTRUCTION GRANT AUTHORIZATION

SEC. 201. (a) Section 207 of the Clean Water Act is amended by striking out the period at the end thereof and adding the following: "; and to carry out this title, other than sections 206(e), 208, and 209, subject to such amounts as are provided in appropriation Acts, for each of the fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1988, not to exceed $2,400,000,000; and for each of the fiscal years ending September 30, 1989, and September 30, 1990, not to exceed $1,200,000,000.".

(b) Section 205(e) of the Clean Water Act is amended by striking, ", 1979, 1980, 1981, 1982, 1983, 1984, and 1985" in the first and second sentences and inserting in each place in lieu thereof "through 1994".

ALLOCATION

SEC. 202. Section 205(c) of the Clean Water Act is amended by adding the following new paragraph:

"(3) Sums authorized to be appropriated pursuant to section 207 for the fiscal year 1986, 1987, 1988, 1989, and 1990 shall be allotted for each such year by the Administrator not later than the tenth day which begins after the date of enactment of the Clean Water Act Amendments of 1985. Sums authorized for such fiscal years shall be allotted in accordance with the following table:

States:	
Alabama	.012500
Alaska	.007563
Arizona	.012500
Arkansas	.011714
California	.058321
Colorado	.010503
Connecticut	.012500
Delaware	.005801
District of Columbia	.009172
Florida	.045181
Georgia	.014570
Hawaii	.007440
Idaho	.007272
Illinois	.036881
Indiana	.019653
Iowa	.012672
Kansas	.012337

Kentucky	.015044
Louisiana	.014380
Maine	.009772
Maryland	.019722
Massachusetts	.036195
Michigan	.035063
Minnesota	.014988
Mississippi	.012500
Missouri	.025422
Montana	.005411
Nebraska	.007467
Nevada	.006805
New Hampshire	.012500
New Jersey	.048867
New Mexico	.006814
New York	.090478
North Carolina	.016168
North Dakota	.004658
Ohio	.045906
Oklahoma	.012223
Oregon	.011794
Pennsylvania	.032302
Rhode Island	.007428
South Carolina	.013399
South Dakota	.006400
Tennessee	.016674
Texas	.053882
Utah	.012486
Vermont	.006581
Virginia	.016689
Washington	.028665
West Virginia	.012712
Wisconsin	.022322
Wyoming	.005359
Samoa	.000732
Guam	.000567
Northern Marianas	.000533
Puerto Rico	.012640
Pacific Trust Territories	.001409
Virgin Islands	.000464

ELIGIBILITIES AFTER 1990

SEC. 203. (a) Section 202(a)(1) of the Clean Water Act is amended by striking out the period at the end thereof and adding the following: ", for any such grants made before October 1, 1990.".

(b) Section 204(c) of the Clean Water Act is amended by inserting "awarded a grant before October 1, 1990," after the words "such facility and interceptors".

(c) Section 205(g)(1) of the Clean Water Act is amended by striking "October 1, 1985" and inserting in lieu thereof "October 1, 1994".

DESIGN/BUILD PROJECTS

SEC. 204. Section 203 of the Clean Water Act is amended by adding at the end thereof the following new subsection:

"(f)(1) An applicant from a State allowing use of this subsection who proposes to construct waste water treatment works may enter into an agreement with the Administrator under this subsection providing for the preparation of construction plans and specifications and the erection of such treatment works, in lieu of proceeding under the other provisions of this section.

"(2) Agreements under this subsection shall be limited to projects which are, under an approved facility plan:

"(A) treatment works that have an estimated total cost of $8,000,000 or less; and

"(B) any of the following types of waste water treatment systems: aerated lagoons, trickling filters, stabilization ponds, land application systems, sand filters, and subsurface disposal systems.

"(3) An agreement entered into under this subsection shall—

"(A) set forth an amount agreed to as the maximum Federal contribution to the project, based upon a competitively bid document of basic design data and applicable standard construction specifications and a determination of the federally eligible costs of the project at the applicable Federal share under section 202 of this Act;

"(B) set forth dates for the start and completion of construction of the treatment works by the applicant and a schedule of payments of the Federal contribution to the project;

"(C) contain assurances by the applicant that (i) engineering and management assistance will be provided to manage the project; (ii) the proposed treatment works will be an operable unit and will meet all the requirements of this title; and (iii) not later than one year after the date specified as the date of completion of construction of the treatment works, the treatment works will be operating so as to meet the requirements of any applicable permit for such treatment works under section 402 of this Act;

"(D) require the applicant to obtain a bond from the contractor in an amount determined necessary by the Administrator to protect the Federal interest in the project; and

"(E) contain such other terms and conditions as are necessary to assure compliance with this title (except as provided in paragraph (4) of this subsection).

"(4) Subsections (a), (b), and (c) of this section shall not apply to grants made pursuant to this subsection.

"(5) The Administrator shall reserve a portion of the grant to assure contract compliance until final project approval as defined by the Administrator. If the amount agreed to under paragraph (3)(A) exceeds the cost of designing and constructing the treatment works, the Administrator shall reallot the amount of the excess to the State in which such treatment works are located for the fiscal year in which such audit is completed.

"(6) Not more than 25 percent of the amount allotted to a State for any fiscal year under section 205 of this Act shall be obligated for grants pursuant to this subsection.

"(7) The Administrator will determine an allowance for facilities planning for projects constructed under this subsection in accordance with section 201(l).

"(8) In any case in which the recipient of a grant made pursuant to this subsection does not comply with the terms of the agreement entered into under paragraph (3), the Administrator is authorized to take such action as may be necessary to recover the appropriate amount of the Federal contribution to the project.

"(9) A recipient of a grant made pursuant to this subsection shall not be eligible for any other grants under this title.".

INNOVATIVE AND ALTERNATIVE PROJECTS

SEC. 205. Section 205(i) of the Clean Water Act is amended to read as follows:

"(i) Not less than one-half of 1 per centum of funds allotted to a State for each of the fiscal years ending September 30, 1979, through September 30, 1990, under subsection (c) of this section shall be expended only for increasing the Federal share of grants for construction of treatment works utilizing innovative processes and techniques pursuant to section 202(a)(2) of this Act. Including the expenditures authorized by the preceding sentence, a total of 2 per centum of the funds allotted to a State for each of the fiscal years ending September 30, 1979, and September 30, 1980, and 3 per centum of the funds allotted to a State for the fiscal year ending September 30, 1981, under subsection (c) of this section shall be expended only for increasing grants for construction of treatment works pursuant to section 202(a)(2) of this Act. Including the expenditures authorized by the first sentence of this subsection, a total (as determined by the Governor of the State) of not less than 4 per centum nor more than 7½ per centum of the funds allotted to such State under subsection (c) of this section for each of the fiscal years ending September 30, 1982, through September 30, 1990, shall be expended only for increasing the Federal share of grants for construction of treatment works pursuant to section 202(a)(2) of this Act.".

MARINE CSO'S AND ESTUARIES

SEC. 206. Section 205 of the Clean Water Act is amended by adding the following new subsection:

"(l) The Administrator shall reserve each fiscal year beginning after September 30, 1985, 1½ per centum of the sums appropriated under section 207, prior to allotment among the States under subsection (c) of this section. Of the sums reserved under this subsection, two-thirds shall be available to address water quality problems of marine bays and estuaries subject to lower levels of water quality due to the impacts of discharges from combined storm water and sanitary sewer overflows from adjacent urban complexes, and one-third shall be available for the implementation of section 320 of this Act. Sums so reserved shall be subject to the period of availability for obligation established under subsection (d) of this section.".

INDIAN TRIBES

SEC. 207. (a) Title II of the Clean Water Act is amended by adding the following new section:

"INDIAN TRIBES

"SEC. 220. (a) The Administrator, in cooperation with the Director of the Indian Health Service, shall assess the need for sewage treatment works to serve Indian tribes, the degree to which such needs will be met through funds allotted to States under section 205 of this Act and priority lists in accordance with section 216 of this Act, and any obstacles which prevent such needs from being met. The Administrator shall submit a report to the Congress for such assessment no later than one year after the enactment of the Clean Water Act Amendments of 1985.

"(b) Beginning with fiscal year 1987, the Administrator is authorized to reserve each fiscal year up to one-half of one per centum of the sums appropriated under section 207, prior to allotment among the States under section 205(e), based on the determination of unmet needs reported under subsection (a). Sums reserved under this subsection shall be available for grants to provide sewage treatment works to serve Indian tribes.

"(c) The Administrator is authorized to make special provision for the treatment of Indian tribes under this title, including the treatment of Indian tribes as States to the degree necessary to carry out the purposes of this section. Such special provision may include the direct provision of funds reserved under subsection (b) to the governing bodies of

Indian tribes, and the determination of priorities by Indian tribes, where not determined by the Administrator in cooperation with the Director of the Indian Health Service. The Administrator is authorized to reduce the non-Federal share otherwise required under section 202 with respect to Indian tribes, as determined by the Administrator in cooperation with the Director of the Indian Health Service.".

(b) Section 502 of the Clean Water Act is amended by adding the following new paragraph:

"(20) the term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community (including any Alaska Native village, as defined in section 113(g), but not including any Alaska Native regional or village corporation) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.".

STATE WATER POLLUTION CONTROL REVOLVING FUNDS

SEC. 208. The Clean Water Act is amended by adding at the end thereof the following new title:

"TITLE VI—GRANTS FOR WATER POLLUTION CONTROL REVOLVING FUNDS

"AUTHORIZATION, ALLOTMENT, AWARD, AND PAYMENT

"SEC. 601. (a) There are hereby authorized to be appropriated the following sums to carry out the purposes of this title:

"(1) $1,200,000,000 per fiscal year for the fiscal years 1989 and 1990;

"(2) $2,400,000,000 for the fiscal year 1991;

"(3) $1,800,000,000 for the fiscal year 1992;

"(4) $1,200,000,000 for the fiscal year 1993; and

"(5) $600,000,000 for the fiscal year 1994.

"(b) Sums appropriated to carry out this title for each fiscal year shall be allotted by the Administrator in accordance with section 205(c) of this Act.

"(c) Sums allotted to the States for a fiscal year shall be available for a grant award under subsection (d) during the fiscal year for which authorized. The amount of any allotment not obligated by the end of such fiscal year shall be immediately reallotted by the Administrator on the basis of the same ratio as is applicable to sums allotted under title II of this Act for the next fiscal year, except that none of the funds reallotted by the Administrator will be allotted to any State which failed to obligate any of the funds being reallotted.

"(d) If a State has entered into a grant agreement with the Administrator as provided in section 602 of this title, the Administrator is authorized to make a capitalization grant to the State from funds available for obligation under this title.

"(e) From funds obligated for a given fiscal year pursuant to subsection (d) of this section, quarterly installment payments shall be made in accordance with the schedule of payments established under section 602(b)(2) of this title.

"(f) If the Administrator determines that a State has not complied with agreements under section 602, or requirements of this title, the Administrator shall notify the State of such noncompliance and the necessary corrective action. If the State does not take such corrective action by the sixtieth day after the date the State receives notice, the Administrator shall withhold additional payments to the State until the Administrator is satisfied that the State has taken the necessary corrective action.

"(g) If the Administrator is not satisfied that adequate corrective actions have been taken by the State within twelve months of the notice provided under subsection (f) of this section, the payments withheld by the Administrator shall be made available for reallotment under subsection (c) of this section.

"CAPITALIZATION GRANT AGREEMENTS WITH STATES

"SEC. 602. (a) To receive a capitalization grant under this title, a State shall enter into an agreement with the Administrator which shall include but not be limited to the specifications set forth in subsection (b) of this section.

"(b) The Administrator shall enter into an agreement with a State only after the State has established to the satisfaction of the Administrator that—

"(1) the State has established a Water Pollution Control Revolving Fund, as defined in section 603 of this title;

"(2) the State has agreed to accept grant payments under this title in accordance with a payment schedule established by the Administrator, and has agreed to deposit all such payments in the dedicated revolving fund;

"(3) the State has deposited in the fund or has agreed to deposit in the fund, from State moneys, an amount equal to at least 15 per centum of the total of all capitalization grants, so that such necessary matching deposits are made no later than the date of each grant payment under the provisions of paragraph (2) of this subsection;

"(4) the State has agreed to make binding loan commitments in an amount equal to 100 per centum of the amount of the grant payments within one year of the receipt of the quarterly payment of such funds;

"(5) the State has made adequate assurances through submission of an intended use report under section 604(c) of this title that (A) all funds available in the Water Pollution Control Revolving Fund will be committed in an expeditious and timely manner, (B) treatment works projects that are constructed in whole or in part prior to fiscal year 1995 with funds directly made available by capitalization grants under this title or section 205(m) to the State Water Pollution Control Revolving Fund will meet the same requirements applicable to grant projects funded under title II, and (C) such funds will first be used to assure maintenance of progress in the completion of all projects needed to meet the enforceable deadlines, goals, and requirements of this Act;

"(6) in addition to meeting the requirements of this title, the State has made assurances that it will commit or expend the payments so received in accordance with laws and procedures applicable to the commitment or expenditure of revenue of the State;

"(7) in carrying out the requirements of section 604 of this title, the State will use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards;

"(8) the State will require as a condition of making a loan that recipients will maintain project accounts in accordance with generally accepted government accounting standards; and

"(9) the State will make annual reports to the Administrator on the actual use of funds in accordance with section 604(d) of this title.

"STATE WATER POLLUTION CONTROL REVOLVING FUNDS

"SEC. 603. (a) To be eligible for an award of a grant under section 601 of this title, each State shall establish a Water Pollution Control Revolving Fund, administered by an instrumentality of the State with powers and limitations including those specified in subsections (b), (c), and (d) of this section.

"(b) The amounts of funds available to the Water Pollution Control Revolving Fund shall be dedicated solely to providing financial assistance (1) to any municipality, intermunicipal, interstate, or State agency for construction of publicly owned treatment works (as defined in section 212(2) of title II of this Act) and (2) for the implementation of management programs established under sections 319 and 320. The fund shall be established, maintained, and credited with repayments, and the fund balance shall be available in perpetuity for this purpose.

"(c) The instrumentality of the State administering the Water Pollution Control Revolving Fund shall be authorized to use the fund to make loans, on the condition that—

"(1) such loans are made at or below market interest rates, including interest free loans, at terms not to exceed twenty years;

"(2) annual principal payments shall commence not later than one year after completion of any project and all loans shall be fully amortized not later than twenty years after project completion;

"(3) the recipient of a loan shall establish a dedicated source of revenue for repayment of loans; and

"(4) the fund shall be credited with all repayment of principal and interest on all loans.

"(d) Except as otherwise limited by State law, a Water Pollution Control Revolving Fund may be used—

"(1) to buy or refinance the debt obligation of municipalities and intermunicipal and interstate agencies within the State at or below market rates, where such debt obligations were incurred after March 7, 1985;

"(2) to guarantee, or purchase insurance for, local obligations where such action would improve credit market access or reduce interest rates;

"(3) as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State if the proceeds of the sale of such bonds are deposited in the Water Pollution Control Revolving Fund;

"(4) to provide loan guarantees for similar revolving funds established by municipalities or intermunicipal agencies;

"(5) to earn interest on fund accounts; and

"(6) for the reasonable costs of administering the fund and conducting activities under this title provided that such amounts shall not exceed 4 per centum of all grant awards to such fund under section 601(d).

"AUDITS, REPORTS, AND FISCAL CONTROLS

"SEC. 604. (a) Each State electing to establish a Water Pollution Control Revolving Fund under this title shall establish fiscal controls and accounting procedures sufficient to assure proper accounting during appropriate accounting periods for—

"(1) payments received by the fund;

"(2) disbursements made by the fund; and

"(3) fund balances at the beginning and end of the accounting period.

"(b) The Administrator shall conduct, or require each State to have conducted, not less than annually, an independent audit to review the operations of each Water Pollution Control Revolving Fund. Such audits shall be conducted by an entity independent of the State, and in accordance with the Comptroller General's standards for auditing government organizations, programs, activities, and functions. An audit under this subsection shall be completed in such time and manner as deemed necessary or appropriate by the Administrator to carry out the purposes of this title.

"(c)(1) Each State shall, on an annual basis, prepare a plan on the intended uses of the amounts available to the fund. The plan shall include—

"(A) a description of the short and long term goals and objectives of the State's Water Pollution Control Revolving Fund;

"(B) information on the activities to be supported, including a description of project categories, discharge requirements under titles III and IV, terms of financial assistance, and communities served;

"(C) assurances and specific proposals for meeting the requirements of section 602(b) (4) and (5) of this title; and

"(D) the criteria and method established for the distribution of funds.

"(2) To meet the requirements of this subsection and to facilitate comments from interested local governments and persons on the use of funds, a State may adapt or use priority systems and lists developed under section 216 of this Act.

"(d) Beginning the first fiscal year after the receipt of payments under section 601(e) of this title, the State shall provide an annual report to the Administrator describing how the State has met the goals and objectives for the previous fiscal year as identified in the plan prepared for the previous fiscal year pursuant to subsection (c) of this section, including identification of loan recipients, loan amounts, and loan terms.

"(e) The Administrator shall conduct an annual review of each State plan and report prepared under subsections (c) and (d) of this section, and other such materials as are considered necessary and appropriate in carrying out the purposes of this title. After reasonable notice by the Administrator to the State or the recipient of a loan from a Water Pollution Control Revolving Fund, the State or loan recipient shall make available to the Administrator records the Administrator reasonably requires to review and determine compliance with this title.".

STATE-OPTION TO USE TITLE II FUNDS

SEC. 209. Section 205 is amended by adding a new subsection as follows:

"(m)(1) The Administrator is authorized to award from funds available for obligation during each fiscal year ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, September 30, 1990, September 30, 1991, September 30, 1992, September 30, 1993, and September 30, 1994, a capitalization grant to a State for the purpose of capitalizing a Water Pollution Control Revolving Fund established in compliance with title VI of this Act, where the Governor requests such action in accordance with paragraph (2) of this subsection.

"(2) No later than thirty days after the date of enactment of this Act with respect to funds available for obligation in the fiscal year beginning October 1, 1985, and not less than ninety days prior to the start of each of the fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994, a State shall provide notice of its intent to use all or a portion of the funds available for obligation in that fiscal year as a capitalization grant for a Water Pollution Control Revolving Fund under title VI of this Act.

"(3) Any sum made available to a State's Water Pollution Control Revolving Fund under this subsection shall be in addition to any funds otherwise allotted to that State under section 601(b) during any fiscal year.".

REPORT TO CONGRESS

SEC. 210. Section 516 of the Clean Water Act is amended by adding at the end thereof the following new subsection:

"(f) The Administrator shall submit to the Congress by February 10, 1990, a report on the financial status and operations of Water Pollution Control Revolving Funds established by the States in accordance with title VI of this Act. The Administrator, in cooperation with the States, including water pollution control agencies and other water pollution control planning and financing agencies, shall include in such report the following:

"(1) an inventory of the facilities that are in significant noncompliance with the enforceable requirements of this Act;

"(2) an estimate of the cost of construction for such facilities that require construction to meet such requirements;

"(3) an assessment of the availability of sources of funds for financing such needed construction, including an estimate of the amount of funds available for loans through September 30, 1999, from the Water Pollution Control Revolving Funds established by the States under title VI of this Act;

"(4) an assessment of the operations, loan portfolio and loan conditions of Water Pollution Control Revolving Funds established by the States under title VI of this Act;

"(5) an assessment of the effect on user charges of the assistance provided by Water Pollution Control Revolving Funds established by the States under title VI, compared to assistance under title II of this Act; and

"(6) an assessment of the efficiency of the operation and maintenance of treatment works constructed with financial assistance under titles II and VI of this Act.".

S. HRG. 99-64

AMENDING THE CLEAN WATER ACT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON
ENVIRONMENTAL POLLUTION

OF THE

COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

S. 53

A BILL TO AMEND THE CLEAN WATER ACT, AND
FOR OTHER PURPOSES

AND

S. 652

A BILL TO AMEND THE CLEAN WATER ACT, AND
FOR OTHER PURPOSES

MARCH 26, 27, AND 28, 1985

Printed for the use of the Committee on Environment and Public Works

U.S. GOVERNMENT PRINTING OFFICE
46-386 O WASHINGTON : 1985

AMENDING THE CLEAN WATER ACT

TUESDAY, MARCH 26, 1985

U.S. Senate,
Committee on Environment and Public Works,
Subcommittee on Environmental Pollution,
Washington, DC.

The subcommittee met at 10:03 a.m., in room SD-406, Dirksen Senate Office Building, Hon. John H. Chafee (chairman of the subcommittee) presiding.

Present: Senators Chafee, Symms, Bentsen, Mitchell, and Lautenberg.

* * * * * * * * *

Senator Chafee. All right, Mr. Ravan, why don't you proceed with your statement?

STATEMENT OF JACK E. RAVAN, ASSISTANT ADMINISTRATOR FOR WATER, ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY WILLIAM WHITTINGTON, DIRECTOR, OFFICE OF MUNICIPAL POLLUTION CONTROL; AND REBECCA HANMER, DIRECTOR, OFFICE OF WATER ENFORCEMENT AND PERMITS

Mr. Ravan. Thank you, Mr. Chairman, Senator Lautenberg. It is a pleasure for me to be here this morning. I have certain key persons on my staff to help us delve into these issues after my statement, and as it may seem appropriate, with your permission, Mr. Chairman, I will ask them to come forward and join me on particular questions or areas.

Senator Chafee. That is perfectly appropriate. It is good for us to get to know the members of your staff. Why don't you bring them up and then we can proceed.

Mr. Ravan. I will ask Bill Whittington to join me.

Senator Chafee. Why don't you identify those with you now?

Mr. Ravan. Bill Whittington, Pat Tobin, and Peter Perez.

Senator Chafee. Anyone else you want at the table?

Mr. Ravan. I only want Mr. Whittington.

Senator Chafee. All right. Glad you are here. Go to it, Mr. Ravan.

Mr. Ravan. Mr. Chairman, my statement is relatively short and it contains, I think, some new information.

As was pointed out this morning, we have learned a great deal about the problems of preserving and enhancing the quality of our Nation's water resources since the passage of the Federal Water Pollution Control Act Amendments of 1972. The basic strategy of that statute, namely, the use of technology standards together with water quality standards, has proven to be an effective approach to water pollution control. Remarkable progress has been made in the last decade or so. More, of course, remains to be done. As history has shown us, periodic adjustments to the act are necessary to ensure that we maintain our progress toward the achievement of the act's goals in the most efficient and effective manner possible.

To that end, members of this subcommittee, members of the regulated community, and we at EPA share a common desire to set the course of water pollution control for the future and to establish the necessary procedures and mechanisms to follow it.

Based on our first-hand experiences, as well as our vision of the problems that confront the program, we believe it is time to review this program and focus on adjustments in several areas. I would emphasize, Mr. Chairman, that we at EPA believe the changes now necessary are not major alterations in the structure or strategy of the act which would delay the program and result in serious resource demands. Rather, the focus of the administration's proposals, with several exceptions I will discuss, is on technical refinement of the act.

Perhaps the toughest issue before this subcommittee, Mr. Chairman, concerns the direction and future of the construction grants program. Let me address that first.

The administration's proposal calls for a $6 billion phaseout, reflecting concern with controlling the Federal budget deficit, a concern which all of us in Government share. This deficit has produced a different fiscal climate. It forces us to make hard choices, and alter some of our timetables. At the same time, I believe that the proposal provides a return to the ultimate State and local self-sufficiency in the construction of municipal wastewater treatment facilities.

Briefly, the proposed changes to title II would phase out the Construction Grant Program over a 4-year period beginning with an authorization of $2.4 billion in fiscal year 1986; $1.8 billion in 1987; $1.2 billion in 1988, $0.6 billion in fiscal year 1989, and thereafter ending the program. All funding would be restricted to the completion of currently ongoing phased or segmented projects. The reasoning behind this use of remaining Federal funds is to concentrate resources on completing what we have already started, and have committed to fund as a result of the 1981 amendments. To be eligible, such projects must have been initiated prior to the fiscal year 1986 budget submittal and must require additional funding to complete remaining segments. To further ensure that Federal funds are directed only to the eligible costs under these amendments for such phased or segmented projects, the 20 percent Governor's discretionary fund, which allows funds to be used for noneligible purposes, needs to be eliminated from title II. Similarly, the allotment formula used to allocate funds to States would be based on remaining phased or segmented project needs. Finally, other set-asides should be discontinued. The plan is to put as much of the funds as possible to finishing ongoing projects. Thus, no Federal funds should be set aside for new starts in rural areas or new innovative or alternative projects. Similarly, no Federal funds would be used for water planning activities. State management assistance under 205(g) would continue but should be limited to managing the Construction Grants Program phaseout. Section 205(g) funds would not be available for other purposes.

I want to talk now about where we have been and where we must go in terms of funding the necessary construction of municipal wastewater treatment plants. Prior to 1972, States and local governments paid for most wastewater treatment plant construction to the tune of $51 billion compared to a $5 billion Federal appropriation.

Senator **Chafee**. What period does the $51 billion cover?

Mr. **Ravan**. We looked back 20 years, Senator Chafee.

Senator **Chafee**. You mean from 1952 to 1972?

Mr. **Ravan**. Yes, sir.

Of course, the 1972 Federal Water Pollution Control Act Amendments increased the Federal role dramatically, particularly in funding. Approximately $44 billion has now been appropriated, and, as the Federal role in the Construction Grant Program increased, the previously high State and local contribution dropped, and in my opinion, dropped dramatically.

In essence, Federal funding has simply substituted for, not supplemented, State and local financing.

In 1977, Congress passed major amendments clarifying the intent that States have the major responsibility to manage and implement title II. The theory behind the 1977 amendments was that State governments, which are close to the problems, should have the administrative capability to carry out their responsibilities. Gradually, the Construction Grants Program grew into a program now recognized nationwide as an effectively managed delegated program, a true Federal-State partnership. We have much to be proud of in making this successful transition.

In 1980, even more far-reaching reforms in the program began to be discussed, which eventually led to the 1981 amendments to the Clean Water Act, as the chairman pointed out. These major amendments signaled the EPA's Construction Grants Program was moving gradually from the prevailing high level of Federal financial involvement to a program focused on increased State and local self-sufficiency. The long-range implications of these amendments were significant. Funding eligibilities were limited so as to reduce the growing level of Federal financial commitment. To focus the grants program on existing rather than future needs, the Congress generally limited Federal funding to completing the construction of Federal facilities needed to intercept and treat wastewater discharges as prescribed by national technology standards and State water quality standards.

Today, we begin the final phase of this transition to State and local self-sufficiency. For our States and cities, this presents a tremendous challenge. For the past 13 years, they have relied heavily upon Federal tax levies. You will ask me: Are States and localities ready to become self-sufficient again, and what will be the Federal Government's future role?

I am confident we can make this final funding transition. I do not underestimate the budgetary realities that States and municipalities will face in reassuming increased fiscal responsibilities as this transition proceeds. But, over the last few years, States and localities have moved a long way toward developing both the institutional and financial capability to address their future needs on their own. Already, many States have acted aggressively in increasing the amount, diversity, and sophistication of their financial assistance programs for these localities. In short, at this critical juncture in our program, State governments are discovering that their responsibilities have not only been increased but also have become more varied. In the future, State governments will continue to play the pivotal role in the Construction Grants Program.

For their part, localities are beginning to develop diverse financing options as well. A few have turned to the private sector, which has recently shown an interest in long-term participation in the municipal wastewater treatment field. Other localities are examining different conventional and nonconventional financial routes. As required by the current act, user fees are under examination, as are other options for funding of future growth, rehabilitation and reconstruction, and more efficient operation and maintenance.

In the coming years, EPA will support these initiatives to smooth the path toward self-sufficiency. We will advise and assist technically, environmentally, scientifically, and in any way we can, the vast majority of responsible communities who are working to achieve compliance and self-sufficiency. Working with the States, we will use the enforcement tools we have been given to cause noncompliers to meet their permit requirements. Our municipal policy spells out just exactly how we will accomplish this objective.

There will always be some who will say that the Federal funding role ends too soon. But believe that State and local governments have begun this path to assume full responsibility for the wastewater treatment program.

Let my turn my attention, Mr. Chairman, to civil enforcement for a moment.

Prior to preparing the administration bill, we made a careful review of existing civil enforcement authorities under the Clean Water Act as compared with other environmental statutes. I want to highlight two changes that we are proposing to the Clean Water Act. These changes concern administrative penalties and the maximum daily penalty assessment.

At present, we basically have two civil enforcement tools. The Agency may issue an administrative order requiring compliance by a violator, or the Agency may ask the Justice Department to file a civil action in the U.S. District Court for penalties and injunctive relief.

The administration's bill would add a third option: Authority for EPA to assess administrative civil penalties up to $10,000 per day per violation with a maximum penalty of $125,000. The option of administrative penalties is already available under many other environmental statutes.

Our intention is not to retreat from vigorous judicial enforcement. We need administrative panalty authority as a complement to our enforcement tools so that we can most efficiently and effectively assure compliance with the Clean Water Act. Many violations simply do not warrant the expenditure of judicial resources. But issuance of an administrative order, without penalties, has not proven powerful enough to motivate violators or deter other similar violators. Our experience with other administrative penalty authorities, such as Toxic Substance Control Act and the Federal Insecticide, Fungicide, and Rodenticide Act proves that, used prudently in the right cases, this tool can be a strong force for achievement of quick compliance.

Administrative penalty authority particularly makes sense under the Clean Water Act. Often these penalty actions will result from self-monitoring. The factual issue will be straightforward enough that administrative alternatives to court litigation would allow an opportunity for a efficient method of resolving the matter. Our proposal includes the opportunity of more flexible hearing procedures that could be tailored to processing a large number of straightforward cases, while still ensuring procedural protection for the alleged violator.

There are differences between our administrative penalty provision and that contained in S. 53. For example, our provision allows a total administrative assessment of up to $125,000 versus the $75,000 ceiling. We favor the higher amount because it will signal to the regulated community the importance which the Agency attaches to compliance and enforcement. The higher amount is often necessary to recapture the economic benefits of noncompliance by a violator. In addition, our proposal and S. 53 differ with respect to court review. We favor court review based on the administrative record developed in the Agency's administrative proceeding, not a new trial in district court. Review would be based on whether there was substantial evidence in the record of the administrative proceeding to find a violation and whether the assessment of the penalty was an abuse of discretion.

Like S. 53, our bill, would raise the daily maximum civil penalty per day per violation for court actions from $10,000 to $25,000. This is consistent with the daily maximum civil penalty assessment under the Clean Air Act, TSCA, and RCRA. Enforcement consistency among the various environmental statutes should increase the regulated community's awarness of the importance of compliance.

The criminal penalties contained in 309(c) of the act have been increased. Existing misdemeanor penalties have been retained for negligent violations. However, the penalties for knowing violations of substantive provisions of the act or of permit conditions and limitations and sewage sludge disposal and pretreatment requirements, have been increased to felony level. Maximum fines for knowing first offenses have been increased to $50,000, together with maximum terms of imprisonment of up to 3 years. Also, the maximum term of imprisonment for the knowing making of false statements, representations, and certifications, or tampering with monitoring equipment required under the act, has been increased from 6 months to 2 years. The provision doubling the maximum fine and term of imprisonment for second convictions under the same paragraph of the act has been extended to this latter penalty.

Also, a new provision adopting from RCRA the concept of knowing endangerment has been added to section 309(c), providing for enhanced felony penalties for certain conduct which knowingly threatens "imminent danger of death or serious bodily injury." The substantial penalties for such conduct are equivalent to those contained in the existing RCRA knowing endangerment provision.

The proposed bill's new system of higher criminal penalties is roughly comparable with that now contained for comparable kinds of conduct in RCRA, as that statute was recently amended. We believe that these penalties, applied to the more serious instances of wrongdoing which cause or threaten to cause significant environmental harm or which have a significant impact upon EPA's ability to run an effective regulatory program, will have a substantial deterrent effect upon such conduct.

NPDES permits are the primary control mechanisms for achieving the majority of our Clean Water Act goals. Therefore, in developing the administration recommendations, we have attempted to identify those provisions most in need of amendment to enhance our ability to continue to effectively implement this successful program. Our bill contains approximately a dozen amendments which will help the NPDES Program to face its new challenges.

The most important amendment in this group addresses the need for an extension of the BAT/BCT industrial compliance deadline. There is no question some kind of extension is necessary. The statute currently requires compliance by July 1984. We are mindful of the fact that the Agency has not been able to promulgate all needed BAT/BCT effluent limitations guidelines. Moreover, EPA and the States have not been able to issue all the permits setting forth individual requirements. Because of the current statutory language, we must issue permits which require immediate compliance, even where that is impossible through no fault of the permittee.

To alleviate this problem, we are recommending an extension that will realistically recognize the time necessary to issue guidelines and permits as well as providing dischargers with a reasonable period to achieve compliance. For limitations based on guidelines issued prior to July 1985, the outside deadline would be July 1, 1988. For limitations based on guidelines issued after that date, or for "best professional judgment" permits, compliance would be required no later than 3 years from promulgation or permit issuance, respectively. Of course, where compliance can be achieved prior to the outside date, that would be required.

Another amendment we are proposing which affects permitting concerns section 301(g) modifications for nonconventional pollutants. This amendment would ensure that variances are granted only in those instances where the Agency has adequate scientific information on aquatic and human health impacts. This is important, since many pollutants defined as nonconventional under the Act are, in fact, highly toxic. EPA's experience indicates that inadequate test methods and incomplete scientific information make it impossible to make the required findings under section 301(g) for many pollutants. This has led to inordinate delays, unproductive resource drains on Agency staff, and uncertain protection against toxicity. The administration proposal specifies those pollutants for which we have adequate data to determine whether the statutory factors are satisfied. The amendment also gives the Administrator the ability to add pollutants to the list where a petitioner demonstrates the availability of satisfactory test methods and data to make the necessary findings. This is appropriate in light of emerging scientific information in this area.

The balance of our proposed amendments regarding permitting are largely administrative and technical improvements and do not fundamentally change the structure of the NPDES Program. For instance, in order to improve program efficiency, we are requesting authority to issue permits with 10-year terms where that is appropriate. In another provision, we are seeking clarification of our authority to issue general permits. For several years, the general permit approach has been an effective device to deal with certain large categories of dischargers with identical control requirements.

We believe the adoption of these proposals will improve the NPDES Program and help us obtain the success in the future that has been achieved in the past.

In conclusion, Mr. Chairman, and other members of the committee, I don't believe there are any easy answers to the questions now before the subcommittee on the future of the Clean Water Act. I have attempted to address only a few of the proposals in the administration's program. My staff and I stand ready to assist the committee and, in the future, to work out meaningful dialog so that the proposal that is before the subcommittee can be finalized.

Thank you, Mr. Chairman. That concludes my prepared testimony.

Senator **Chafee**. Thank you, Mr. Ravan. I think we will go right to questions. Why don't we limit them to 8 minutes apiece, and go in order of appearance here, and then start through again. We will have plenty of time for everybody to ask questions.

Senator Mitchell, do you have an opening statement you would like to submit now or give?

Senator **Mitchell**. I do have an opening statement, Mr. Chairman. In the interest of time, I will merely ask that it be submitted in the record at the appropriate place and proceed with questioning.

Senator **Chafee**. Fine. That certainly will be done.

Mr. Ravan, your approach to compliance is quite different from the one we have in our bill.

In other words, as you say in your statement, "Compliance would be required no later than 3 years from promulgation of permit issuance."

In the bill that we have we keep the same outside date of July 1, 1987. Maybe we ought to go another year to July 1, 1988. We can determine that. But nonetheless, we set a deadline where you have to comply. Your answer is: How can they comply before the guidelines have been issued? Our answer is: You better get the guidelines out. Industry can just delay and delay and, indeed, go to court and hold you up so that this staliing games goes on forever.

What is your answer to that?

Mr. **Ravan**. Mr. Chairman, I would agree with you that past performance by the Environmental Protection Agency has not been, in particular, stellar. However, since the settlement of the principal cases involved with compliance, that is to say, the suit that outlined the need for some 34 principal guidelines for the major categories of industry, and beyond that some 126 toxic pollutants, the Agency's performance over the past 18 months to 2 years, I believe, has hopefully, increased the level of confidence of the subcommittee and full committee and, indeed, the American people.

We have, so far, published 24 of the necessary 29 industrial categorical guidelines, and we feel that we will complete this job within the next few months.

Senator **Chafee**. Next few months?

Mr. **Ravan**. We hope to complete the process by March 1986 for the most complicated of the guidelines. Finally, my point is that the permittees, have in hand either a BPJ permit or the guidelines, but some time is necessary for achieving compliance. We consider 3 years necessary for engineering design and construction of the clean-up mechanisms.

Senator **Chafee**. Yes. I see the problem, but I also see the other side, which is, industry doesn't like it, and then they come in and sue and go to court and get you all tangled up. Therefore, there is never compliance. This has gone on for an awfully long time. I do understand industry's problem that they haven't gotten the guidelines so how can they comply, but frequently, the delay in the guidelines is that they have been harassing you people about your potential guidelines. Is that true?

Mr. **Ravan**. I would hesitate to characterize it as harassment. Certainly, when you are working as hard as we are to comply with, first, the act; and second, court-ordered deadlines, you do not need an overabundance of letters, phone calls, and further attempts to extend the deadlines through court action.

I would simply point out that, Mr. Chairman, I think our performance most recently is indicative of some trust. I do believe that those industries with guidelines now in hand, have demonstrated that the guidelines work. While one may characterize it as harassment, the process is, indeed, complicated; it is very, very thorough; it is expensive, and it has been time-consuming.

Having said all that, with that guideline on the street, I believe industry is in a position to comply, and I would certainly agree with the subcommittee chairman and others that we do need an enforcement date for compliance.

Senator **Chafee**. All right. I obviously will spend more time on that before we are through. There is quite a difference.

Let's go to the Construction Grants Program, and Mr. Whittington can be part of this, if it is appropriate. There is obviously a great variance in what the administration has and what we have. You put in $6 billion, we put in $18 billion of Federal money, and ours extends over 9 years.

Under this, we provide $9.6 billion directly to the States, and the other for construction and $8.4 billion for the revolving fund. Now, we know that some communities won't meet the July 1988 deadline.

Do you think, Mr. Ravan, or Mr. Whittington, that the $9.6 billion will come close to buying out the Cores treatment needs of communities across the country?

Mr. **Ravan**. Mr. Chairman, the core treatment needs estimate for construction does, indeed, vary between our number and yours. Clearly, the $6 billion as proposed by the President's budget is our number. This is our first look at changing the program, not only in terms of time, but in terms of entitlements as well. We certainly look forward to working with the subcommittee not only this year, but in the future as true core requirements are better defined, either under the proposal that we have submitted or what may finally emerge from the Congress.

I would hesitate this morning to say what the specific number is. I believe our own $6 billion figure, is the best estimate of necessary requirements.

Senator **Chafee**. And you are not sure one way or the other? I personally believe that the $9.6 billion will get, or certainly come close, to buying out the core treatment needs of the communities.

Mr. **Ravan**. Yes, sir; I think the difference probably lies in definiation of core treatment, Senator Chafee.

Senator **Chafee**. Well, if you come forward with $6 billion and we say $9 or $9½ billion, then if you think your $6 billion is going to get it, isn't our $9.6 billion going to get it?

Mr. **Ravan**. Yes, sir.

I believe your number will cover it plus a little.

Senator **Chafee**. Well, it is not that complicated in mathematics. So the answer is yes.

Mr. **Ravan**. The answer is yes as to the core needs. I believe we are in agreement that whatever moneys are made available should be applied to those core treatment needs which drive water quality increases. Our only disagreement, basically, is the number.

Senator **Chafee**. All right. I am informed my time is up.

Senator Lautenberg. You have 8 minutes.

Senator **Lautenberg**. Thank you, Mr. Chairman.

Mr. Ravan, I am one of those who say that we are not going to have enough in here to do this job, as you mentioned in your comments. I have to ask you a question. You made reference to the 20-year period during which $50-some billion was spent by communities in developing their appropriate sewage treatment facilities.

What has been spent? Do you know, in addition to Federal Government funding since 1972, whether there has been any moneys that have come from local, State, or private sources to deal with the water problem?

Mr. **Ravan**. Yes, sir, they certainly have. At least 25 percent; in some cases more than that.

Senator **Lautenberg**. That is 25 percent as a requirement of the formula, right?

Mr. **Ravan**. Yes, sir.

Senator **Lautenberg**. How about funds? Would you be bold enough to say that there has not been any funding beyond that which is attached? Private companies are spending money on pretreatment systems, are they not? It is required, is it not?

Mr. **Ravan**. I believe there are two sides to that, Senator Lautenberg. Certainly, with regard to municipal, public wastewater treatment, the investment beyond that required as a match for the receipt of the title II construction grant has been—I believe I could characterize it as minuscule—very, very minor, as opposed to the industrial investment, and, some of the that is in terms of pretreatment needs. The industrial sector has devoted a great deal of money, in excess of $60 billion, over that same period of time.

Senator **Lautenberg**. OK. So then your statement that the Federal Government has become the source for funding in substitution for other sources is somewhat in question because, in fact, there has been, and continues to be, a lot of money spent on sewage treatment facilities.

Mr. **Ravan**. Yes, sir. One could, I believe, argue about the substitutionary effect of the Federal Grant Program. Our numbers show that the State and local governments, have done very well in putting up their local share. However, the major portion of funding was provided by the Federal Government, some $44 billion already plus whatever we add now. This will probably total approximately $50-billion-plus for the most recent 20-year period. This money is a substitution for the $50 billion or so provided in the previous 20-year period which was largely put up by State and local governments.

Senator **LAUTENBERG**. Yes. There is also a difference in awareness; there is also a difference in compliance required by law.

Mr. **RAVAN**. Yes, sir.

Senator **LAUTENBERG**. So the game has changed in relation to the arithmetic.

Mr. **RAVAN**. Yes, sir, significantly changed.

Senator **LAUTENBERG**. I have some questions I would like to get brief answers to. In EPA's future role in municipal wastewater treatment, the Agency concluded that the gradual transition was needed to increase the State and local role in wastewater treatment financing.

How does your proposal provide for a gradual transition? The effect of what you are proposing, I think, would almost cause a precipitous change in the character. How do you see it as a gradual transition?

Mr. **RAVAN**. Senator, given, quite honestly, some past performances of EPA in terms of change, even in some cases, a regulatory change, may, in fact, be characterized as the most normal thing we have done.

The administration proposal indeed, provides, for a 5 year, 1985–89, a phaseout period. Generally speaking, one can design and construct a facility in that period of time. So I would say it is a relatively reasonable period of transition.

Senator **LAUTENBERG**. Are you talking about individual project that have already begun?

Mr. **RAVAN**. Yes, sir.

Senator **LAUTENBERG**. But the need, of course, is substantially greater, you would admit that, than those that have already begun?

Mr. **RAVAN**. Clearly, Senator Lautenberg. In fact, the needs survey for fiscal year 1984, showed our Nation's need on the order of magnitude, depending on where you draw the line, up to $100 billion. I don't think there is anybody who believes that the Federal tax dollar can support every one of those.

So, it has now become a question of when, and how much.

Senator **LAUTENBERG**. The fact of the matter is that with that much legitimate need, the transition phasing looks like it is going to be fairly abrupt as opposed to gradual? I mean, for those that are in development, it is going to be gradual; for the others, it is a shock.

You are aware that in New Jersey, municipalities which are not providing adequate sewage treatment are currently subject to construcion bans in our State?

Mr. **RAVAN**. Yes, sir, I am generally aware that the State has that authority.

Senator **LAUTENBERG**. We have 70 North Jersey municipalities presently subject to bans on construction because of inadequate sewage treatment facilities.

It is a severe penalty on those communities. Development is there to be had, and we can't move ahead with it because these communities cannot adequately supply the sewage facilities.

Does the administration continue to support the requirement that the sewage treatment plants achieve secondary treatment by 1988? I didn't see that in your testimony.

Mr. **Ravan**. Yes, sir, we certainly do.

Senator **Lautenberg**. How does the administration expect these municipalities to meet that kind of a deadline? Financing is not going to be there. It is impossible for these cities to be able to raise the funds, do the planning, et cetera, to comply with that if they are left to fund it on their own.

Mr. **Ravan**. Senator Lautenberg, I would agree with you, first of all, that this is, in fact, coming right down to the horns of a dilemma. The promise of the 1972 water quality amendments seemed to say that, from the Federal tax dollar, there would come some percentage of support for new requirements, increased, stringent requirements, to achieve our water quality standards.

In fact, the law itself does not provide that the Federal tax dollar will forever purchase and pay for these requirements. As I tried to point out in my testimony, there may be some debate about the degree of the substitutionary effect, but as compared to industry and what they have done, our municipalities have, indeed, lagged behind, not speeded up.

One could hope that the Federal tax support for this program to the tune of some $44 billion, would have acted as an incentive to carry on with what had gone before. Actually, we saw the grants in most cases acting as a disincentive. In fact, the cities tended to wait—and this was as much EPA's problem as it was the cities—for the receipt of a grant, meaning, "I will clean up when you give me a grant."

The courts have already ruled on this; that approach is not the case although, up until 1984, allowed that perception, at least, to continue.

The fact of the matter, is the cities, as well as our industries, should be cleaned up to the degree necessary regardless of a grant. I think that was the intent all along.

Senator **Lautenberg**. Again, as we deal with the funding for these past few years, we are forced to examine the scope of not only awareness but a requirement to comply, and that certainly has enlarged in these last years. So, even though there has been significant support with Federal dollars, the fact is that relative to the objective, it is a smaller percentage, I think, than we saw being invested in the earlier 20-year period that you talked about.

Mr. **Ravan**. Yes, sir.

Senator **Lautenberg**. I will come back again, Mr. Chairman. Thank you.

Senator **Chafee**. Senator Mitchell.

Senator **Mitchell**. Thank you, Mr. Chairman.

Let me pursue, Mr. Ravan, just briefly the line of questioning that Senator Lautenberg started on. You argued in your prepared statement and in here repeatedly, the substitution argument. There is ome ambiguity in the figures you provide in your statement. The phrase you use is, "Prior to 1972, States and local governments paid for most wastewater treatment plant construction, $51 billon compared to $5 billion in Federal"—of course, prior to 1972, could be any period of time. You have used the phrase "20 years before," and "since." Obviously, there haven't been 20 years since 1972. Let me ask you specifically, what does the phrase, "Prior to 1972," mean, in point of time?

Mr. RAVAN. We studied the 20 years immediately prior to 1972, Senator.

Senator MITCHELL. This should more accurately read, "From 1952 to 1972."

Mr. RAVAN. Yes, sir.

Senator MITCHELL. Now, then, you use a figure of $44 billion has been appropriated, and as the Federal role in construction increased, the previously high State and local contribution dropped off. OK; $44 billion; is that from 1972 to 1984?

Mr. RAVAN. Yes, sir. That would incluide 1984.

Senator MITCHELL. All right. So we are now talking about from 1952 to 1972, $56 billion was spent, which was $5 billion, Federal; from 1972 to 1984, $44 billion was spent.

Now, you don't say what portion of that was Federal and what portion State and local. What are those figures, so we just get some kind of a comparison here.

Mr. RAVAN. Yes, sir. My statement should have been more complete, and it is only stated that way to try to be brief. The $44 billion is, indeed, the Federal tax dollar investment. There is, in addition to that, 25 percent from State and local governments, which would drive the——

Senator MITCHELL. Twenty-five percent of what?

Mr. RAVAN. Of the $44 billion.

Senator MITCHELL. $44 billion. What is the comparable dollar figure for State and local expenditures during that 12-year period?

Mr. RAVAN. $12 to $17 billion of State and local assistance, driving the total investment to approximately $57 billion during that period.

Senator MITCHELL. $12 to $17 billion. If you take the midpoint, it would be $14 or $15 billion; that would give you $59 or $60 billion. All right.

So, if I can summarize, because I have got some questions on this, what you are saying is that in the 20 years prior to 1972, a total of $56 billion was spent; $51 local, $5 Federal? In the 12 years since, a total of $59 billion was spent, $25 local, $44 Federal. Is that accurate?

Mr. RAVAN. Yes, yes. And if you will allow me, I will refine those numbers so that the record may reflect the totals more accurately.

Senator MITCHELL. Fine. Because it is very unclear from your statement, so we can know what the basis for your argument is.

Let me say that I am very disappointed regarding the administration's plan to terminate the construction grant program. As you know, I have joined Senator Chafee in sponsoring amendments to the act which provide a longer period, and as he has pointed out, establishment of a State revolving fund. At the same time, I am concerned that while loan funds may be appropriate for wealthy and financially secure communities, Mr. Poorer Community will not be able to support loans and will be at a disadvantage in an attempt to comply with the law.

In considering the loan fund concept, and I understand that was originally developed by EPA, have you considered the impact on financially stressed or relatively poorer communities?

Mr. Ravan. The worse the financial condition of the local community, Senator Mitchell, obviously, the worse the impact of diminishing Federal funds.

Clearly, the State revolving fund, and let me underline State, is a method whereby assistance could, in fact, be delivered to those smaller towns, especially those in distress.

Senator Mitchell. You understand that the EPA study of revolving loan funds suggests allowing States to use funds to either grants for loans and suggests a bonus program for States which set up loan programs. Could you describe, in your view, the relative advantages or disadvantages of a grant/loan option, and do you think that is one way of easing the impact on the poorer communities?

Mr. Ravan. Yes, sir. The State revolving fund concept was, indeed, a part of our look to the future funding of wastewater treatment at the Environmental Protection Agency.

The State revolving fund should have maximum flexibility, and the State, as it develops these funds, would provide for either loans or loan guarantees. Those revolving loans, in fact, may vary depending upon financial capability of the local community involved.

One way to set up the State revolving fund was as you described, and it was one of the options coming out of the study.

Senator Mitchell. Let me switch to another area now, toxic pollution. As you know, Senator Stafford's reauthorization bill provides an aggressive and expanded program to control toxic discharges. The bill places major responsibilities on States for the identification of water quality, limited segments, and adoption of effluent limits to protect those segments. At the same time, the bill looks to the EPA to develop additional guidelines for industries which discharge toxic pollutants in significant amounts. On that, I would like to ask you a series of questions, all related.

Would you describe the Agency's plans, if any, for development of additional guidelines? What industries will you address first? How many additional guidelines do you believe are needed, and do you have an overall strategy for development of these documents?

Mr. Ravan. Yes, sir; I would be happy to, and I will ask Miss Hanmer to interject if I should fail to completely respond to certain aspects of your question.

First of all, the issue of toxics is an important one. We look to a period of time beyond the implementation of BAT by industry. We look to a time when, those plumes being discharged will decrease based upon the fact that the BAT controls should be in place.

There are two significant parts of the act that should bring this about.

First, there is the list of 126 toxic pollutants, which are of principal concern to us as, and have been identified both by the Congress and the courts. Second, we are, indeed, refining, even now, our list of categories of gudielines necessary to control those toxic pollentants. Our knowledge and information, in this area is, indeed, incomplete. Monitoring data will be used to determine where the amount of toxic pollutants being discharged by an industrial category warrants the development of an effluent guideline. We will not hesitate to publish new effluent guidelines to help control toxics when necessary.

In the water column itself, we have begun serious work. We are probably 2 years down the road, now, on monitoring by living organisms in the water the effects of these toxic pollutants and what we should do to further control them.

Another area of work has to do with toxics and sediments and how those sediments may affect the water quality of the water above the sediments.

We are, indeed, finding that there are segments in water quality streams that are affected by those sediments, and what we may describe as toxic hotspots.

Miss Hanmer, would you like to add to that?

Senator MITCHELL. Let me ask Miss Hanmer: Given the Agency's past problems in the development of fiscal year guidelines, are you confident that you have the resources to develop, promptly, high quality guidelines in the area of toxics?

Ms. HANMER. Right now, we are placing our primary responsibility with our present resources, which would be for fiscal year 1985 and the proposal for 1986, on finishing up the effluent guidelines for what we in the enforcement program regard as the most important remaining categories, especially the organic chemicals industry.

As we are getting in the data from permit applicants, which have to supply to us data on the toxics contained in their discharges, we are continually identifying what new categories we may need effluent guidelines.

But, frankly, our highest priority is focussed on those guidelines that presently are under development and are not yet out, specifically, the organic chemicals industry and pesticides.

Senator MITCHELL. I have a number of other questions, is my time up?

Senator CHAFEE. Your time is up. Everybody will get another chance. We will have another round.

We are delighted that the ranking member of the committee is here, Senator Bentsen.

Senator, do you have an opening statement? If not, would you like to ask questions at this time, or both? You can do both.

Senator BENTSEN. Thank you, Mr. Chairman, I apolize for not being here at the opening, but we had a conflict in the Intelligence Committee, and I had to be there.

I would like to say that the idea of phasing out Federal involvement by 1990 and no new starts, I think, is much too abrupt, and I believe it is poorly planned to permit a successful continuation of the program. In fact, I think it would be unacceptable to the Congress and the States and to the American people.

Mr. Chairman, I would like to have my complete remarks in an appropriate place in the record, if I may.

Senator CHAFEE. All right, your statement will follow the other opening statements.

Senator **Bentsen**. I would also like to ask some questions concerning new starts.

When you talk about eliminating all new starts, that is going to mean many new projects high on the priority list and necessary to meet the 1988 municipal deadline and other requirements would not be funded. Why shouldn't projects be allowed that can be completely funded during the life of the Construction Grant Program? Why shouldn't they continue to be eligible?

Mr. **Ravan**. Senator Bentsen, as I pointed out earlier, clearly, at this time we are facing a deficit problem; our program is viewed as a contribution in trying to eradicate that problem.

Second, if all the resources available under this program are, indeed, dedicated to treatment needs, Core needs rather than some other new projects that might be started under the program, that is, interceptors, CSO's and the like, we believe that most of the Core needs for treatment which drive water quality needs, will, indeed, be met.

I agreed with the subcommittee chairman that the number for those Core needs is somewhere between our number and, I believe, your number of $8 billion.

Senator **Bentsen**. Another one that concerns me is the administration recommending an end to the 20 percent discretionary authority of the Governor to fund categories of treatment works that would not otherwise be eligible.

I hope this committee does not accept that recommendation and that that 20 percent discretionary authority will be continued.

Now, if it is, the committee will consider clarifying that this 20 percent can also be used to fund the reserve capacity which is not otherwise eligible.

Do you see any pitfalls in that approach?

Mr. **Ravan**. Senator Bentsen, the principal pitfall, I believe, goes to the same problem that Senator Lautenberg brought to the subcommittee. It is new capacity, so-called reserve capacity, in some communities and new capacity or new tie-ons in other communities.

Generally speaking, these needs are for new and developing areas. There are exceptions to that that I can address. However, for the most part, these needs tend to identify the growth path for new areas and communities, whose economic and growth opportunities are most likely able to bear the cost of extending the sewer system.

I would urge the committee, especially in an era of scarce resources, to make new tie-ons, the reserve capacity, new growth, et cetera, pay its own way.

Senator **Bentsen**. Because of the limitation of time, I will not pursue that one, but I will go on to ask, have you discussed our viewpoint on the revolving loan fund provisions?

Mr. **Ravan**. Yes, sir; We have discussed the State revolving fund extensively throughout the last year.

Senator **Bentsen**. I mean this morning?

Mr. **Ravan**. Yes, sir; to some extent this morning.

Senator **Bentsen**. Why don't you elaborate on it a little more for my benefit, will you, please?

Mr. **Ravan**. Yes, sir.

Again, let me emphasize the revolving fund is not a terribly innovative idea, but I think it does provide one way, as pointed out in our 1-year study effort, the States could, in fact, make the transition from a principally Federal-funded tax dollar program to a State and/or local program. The funds for the State revolving funds, as we pointed out, could come from a number of sources.

Senator BENTSEN. Do you think you have enough flexibility? Do you think they are technically adequate as they are now stated?

Mr. RAVAN. They would be technically adequate. Each state can best design the logic of the revolving fund to suit its needs. We are not mandating the design.

Senator BENTSEN. You are recommending the authority to issue general permits for classes of facilities.

Mr. RAVAN. Yes, sir.

Senator BENTSEN. That is a major change in the act which doesn't allow general permits except under section 404 in limited circumstances. I can, however, see the general permits might be appropriate for some types of facilities.

Do you have specific examples where those general permits might be used?

Mr. RAVAN. Yes, sir, we do. I will let Miss Hanmer give the specific categories. General permits, though, are a very good tool for the Agency.

Ms. HANMER. As a result of a lawsuit in the midseventies, the court indicated that EPA, even though general permits were not specifically authorized in the statute, could use general permits as a tool in our permit program, and we have been using it as a tool in the program.

The largest category of discharges covered by general permits is the oil and gas drilling category in the outer Continental Shelf. In fact, if we were not using general permits for this type of permitting, we would have a great difficulty getting these permits produced at all.

Other categories basically include things like feedlots or cooling water. We would not use general primary for permits industries for example. General permits are most readily used for the types of discharges that are susceptible to engineering fixes. These fixes are the same for large numbers of industries, and in this way we can specify by rule what people have to do and have reasonable assurance that it is an effective way to regulate as opposed to giving them permits.

For the oil and gas drilling areas, I think it has been our most-used permitting mechanism.

Senator BENTSEN. Yes. Thank you very much, Mr. Chairman. I will have some other questions.

Senator CHAFEE. Thank you.

Senator Symms, do you have a statement you would like to put in?

Senator SYMMS. No, Mr. Chairman.

Senator CHAFEE. Why don't you proceed with your questions?

Senator SYMMS. I thank you for being here, Mr. Ravan. I will carefully look back through your entire statement. I have just scanned it. I notice you make some mention in there about private treatment plants showing some hope for the future. We had some hearings in the Joint Economic Committee last year on the broad question of privatization as a way to reduce the Federal budget, and Parsons Corp., CH2M Hill, Morrison-Knudson, and other companies that are leaders in this tell me all the time that if we don't do anything to disrupt the tax code that the water treatment of this country can be taken care of by selling service contracts.

Are you working with Treasury to be sure that they don't recommend something that will do away with that opportunity? What does that look like to you in the future?

Mr. RAVAN. Senator Symms, we did, in fact, discuss this in our study for the program that was just completed. We, have had a number of discussions. Those discussions are ongoing with the Department of the Treasury officials. I must report that neither of us have reached any final conclusions with regard to the tax structure that might be needed or necessary or to act as an incentive or a substitution for the grants program.

Senator SYMMS. If I understand it correctly, Chandler, AZ, for example, is the one that they keep citing to me that they have sold a service contract. A private company, the Parsons Corp., has built a treatment plant, and then they operate it. I guess the only question which comes up is whether they have to have industrial revenue bonds to make it work?

I don't think they do, but what is your opinion on that?

Mr. RAVAN. Sir, I think that the necessary foundation for the so-called private approach is that you have to have two willing partners. You need a public entity of city, town, municipality, county, that wants to explore this opportunity, and you need a private concern that is committed not to short-term but to long-term improvements in that community.

After that, quite honestly, it simply boils down to service provided versus price for that service. I think this is a good idea. Two or three of our cities across the Nation are trying it. Actually, it is an old idea with regard to drinking water.

Senator SYMMS. Right.

Mr. RAVAN. Wastewater treatment, I believe, offers an opportunity in this area.

Senator SYMMS. The city of Boise for years has had a private drinking water treatment plant. They also have a publicly owned treatment plant. Morrison-Knudson, which happens to be headquartered in Boise, ID, a large engineering and construction firm, wants to get into this business of going out and doing the capital expenditures and selling long-term contracts and operating these plants for municipalities all over the country. There is a place in Alabama. Is it Brewton, AL?

Mr. RAVAN. Auburn, AL.

Senator SYMMS. Auburn, AL.

In fact, the mayor of Auburn was here last week talking about that. Are those working out well?

Mr. RAVAN. Yes, sir; they are showing real promise. Those two particular projects are in early phases and others may follow.

Again, I am simply suggesting to the subcommittee and to the cities and towns across the country that they might take a look at this option. It will not work for all cities and municipalities, but in some cases, it does, indeed, provide an opportunity for the future.

Senator SYMMS. It would appear to me that one way to help the budget situation is to open the door and share information and encourage this and not do anything with the tax code that would discourage this. I think that the service contract on a long-term basis is the key to it, so they could do that and then they could invest in the plans to have the normal depreciation and tax incentives for capital expansion and be in a profitable position and could go in and help clean up the Nation's water supply.

On another subject, I would like to, Mr. Chairman, submit a question on a problem we have in Lake Pend Oreille. The water quality continues to deteriorate year by year, and there is some discussion as to whether that is being caused solely by a pulp mill that is up river or also from cabins around the lake. I would like to submit a question to you on that.

Mr. RAVAN. Yes, sir.

Senator SYMMS. If could, for the record.

My last question is on pretreatment. We have a problem in Idaho, as you may know, Hewlitt-Packard is a company that has joined with the city and pays them for some of their water treatment operations from a plant that they have in Boise. Yet if we adhere strictly to the national standards, then they have to treat the water twice. I think there is some 75 cases like this in the country. What is your position on that?

Mr. RAVAN. Senator Symms, our position on that has not changed. However, I would like to further elucidate our position.

I believe that the pretreatment program, to date, in the Federal categorical standards actually is showing that it does work. It is time to follow the program that is presently on the books. I certainly urge the subcommittee to adopt this approach because while this has been a very, very painful and slow process we are, in fact, making good progress. With the publication of regulations to allow correction for the kind of situation that you have described if we don't need to treat it twice the pretreater can, in fact, get credit for having taken those steps. There is no need to charge the publicly owned treatment works a second time around.

Our regulation covering removal credits is available, and I would hope to work with your particular situation and others across the country to make certain that, in fact, it is not causing double pain where it is not necessary.

Senator SYMMS. So you think that we will be able to work that out?

Mr. RAVAN. Yes, sir; I do.

Senator SYMMS. That is all we really want to do, is to have the water we put back in the Boise River be of higher quality than the water already in the river. We just want to get credit for the good job they have done out there. That is all the people are talking about.

I thank your very much.

Thank you, Mr. Chairman.

Senator CHAFEE. Senator, you have a little more time if you would like to use it?

Senator SYMMS. That is fine. Thank you.

Senator **Chafee**. Mr. Ravan, let's go back to the subject Senator Bentsen was discussing, namely, the task force about the future funding for POTW.

As I understand, you had a year's study on this matter?

Mr. **Ravan**. Yes sir.

Senator **Chafee**. As you know, in the bill we have cited, we have this revolving loan fund?

Mr. **Ravan**. Yes, sir.

Senator **Chafee**. I am sure you have had a chance to look at that. Under this, States must commit their funds to the projects within 1 year or they lose these moneys to reallotment.

Mr. **Ravan**. Yes, sir.

Senator **Chafee**. That is what our bill provides.

Mr. **Ravan**. Yes, sir.

Senator **Chafee**. Do you think this is a reasonable time for the States to establish these funds?

Mr. **Ravan**. Yes, sir; I do. That might not be the case if we had not had the program since 1972, but at the present time, I think we have developed a priority list, water quality standards, permitting, et cetera. The requirement to place those funds within 12 months, I think would be reasonable.

Senator **Chafee**. Also, as you recall, these don't start until 1989. That is when, under our legislation, the funds come in.

In our bill, we have a 15-percent contribution that is required from the States to match the Federal contribution, 15 percent of the Federal. Obviously, we want to leverage as much as we can with the Federal contribution.

My question to you is: Do you think the 15 percent is reasonable? Should it be more? Should it be less, based on your experience with the past and your thoughts?

Mr. **Ravan**. Sir, certainly. I think it would be reasonable. The State and local governments under the previous program were accustomed to paying 25 percent. Therefore, I would think that they would consider a 15-percent match reasonable.

Senator **Chafee**. Do you think it is a little low, even?

Mr. **Ravan**. It might be a little low, yes, sir.

Senator **Chafee**. On the one hand, we want the States to have their own programs, and we don't want to saddle them with a lot of redtape.

On the other hand, we don't want Federal dollars squandered or spent on lower priority projects. We are walking this thin line here.

What would you consider an adequate assurance that a State is complying with the requirements? In order to receive the funds, the States have to agree to give adequate assurance to the Administrator that the treatment works is constructed prior to 1995 with funds from the revolving fund that will meet the same requirements applicable to grants requirements funded under the regular program. We have to get assurance from them that they are going to use these revolving funds with adequate assurance that they are going to be constructed in the proper fashion.

Mr. **Ravan**. Yes, sir.

Senator **Chafee**. What do you think we can get out of that?

Mr. RAVAN. Mr. Chairman, our study of that point actually deals with both dollar availability as well as what I would refer to as, the regulatory burden. Some people would simply call it redtape.

I believe that there will come a time when our proficiency and technology of building wastewater treatments in this country is adequate, at least to the point that this regulatory burden can be relieved. Your requirement to carry through 1995, to me, as I examined the program this last year, seems to be a bit long.

I would suggest that the first time around, in other words, the first use of the money out of the revolving fund might very well carry with it the requirements that you suggested. However, I believe there also must come a day, hopefully, as quickly as possible, when the States would be given absolute flexibility for utilization of these funds, and I would only want to audit for basic honesty and the purpose of the grant.

Senator CHAFEE. Under the current law, as you know, we have the minimum of 4 percent for the innovative and alternative projects.

Your bill deletes the I/A completely.

Why do you do that, because of the short-term phaseout or you don't think the I/A is working well?

Mr. RAVAN. The earlier, Mr. Chairman, I believe that our focus should be upon treatment coordinated with available dollars. That is, in fact, our reasoning. The I/A Program has seen some successes, and we are not philosophically against I/A.

Senator CHAFEE. Yes, except if you eliminate it.

Mr. RAVAN. Only because we would like those dollars to be focused upon treatment.

Senator CHAFEE. I never understood that the I/A was not involved with treatment, just an innovative approach. I remember when we first put that in here. We were trying to get people to get the communities to try something different instead of putting the plans off the shelf somewhere.

Mr. RAVAN. That is right, sir, especially with regard to land treatment types of systems, and smaller types that did not need physical-chemical treatment.

Senator CHAFEE. That is right.

Mr. RAVAN. Again, as the administration proposal that we have for you this morning, is asking for funding for those present, ongoing phased, segmented projects, which are, indeed, for the most part, aimed toward treatment.

Therefore, the I/A 4-percent provision would be eliminated.

Senator CHAFEE. Has it been your experience—and you have looked at this with a 4 percent mandatory I/A—that States have gone to lower priorities than they normally should have in order to get the 4 percent?

Mr. RAVAN. No, sir; I would say that the program has been fairly well balanced. We have had States that took maximum advantage of the 4 percent, and we have had States that did, in fact, lose money on reapportionment, reprogramming.

Senator CHAFEE. Did any of the States go up to 7.5 percent which they could have done?

Mr. RAVAN. We don't believe so, Senator, but I would be happy to submit more information on that for the record.

Senator CHAFEE. I guess my specific question to you is: How do you think the I/A's worked out? Has it produced anything exciting?

Mr. RAVAN. Nothing specific comes to mind, Senator, that really was exciting, or a major breakthrough for treatment technology. It is more likely that I/A has provided for alternatives, better alternatives, perhaps, in some instances, for communities.

We are not philosophically against the I/A proposal.

Senator CHAFEE. I am informed my time is up.

Senator Lautenberg.

Senator LAUTENBERG. Yes. Thank you, Mr. Chairman.

Mr. Ravan, has the administration done a thorough study on the effect that your proposal would have on user fees in the urban areas of this country with large needs?

Mr. RAVAN. Senator Lautenberg, the proposal I have before you with the $6 billion phase-out, is that what you are referring to?

Senator LAUTENBERG. Yes.

Mr. RAVAN. No, sir; I don't believe there is a thorough study.

Senator LAUTENBERG. There is a suggestion in your report that user fees might be one part of the resources necessary to fund the projects in the future.

Mr. RAVAN. Yes, sir.

Senator LAUTENBERG. I would suggest, Mr. Ravan, that without some idea of what those fees might be like attacks the credibility of your recommendation. If user fees go through the roof, it limits growth potential, it imposes a terrible burden on the older cities and the urban areas.

In EPA's recent report on Federal and municipal wastewater treatment, EPA concluded that a gradual transition was necessary to increase the State and local role in wastewater treatment financing. I believe that the administration's proposal fails to provide adequate assistance, as I earlier said, therefore, prevents gradual transition.

The proposal leaves local municipalities, which have been waiting for Federal grants, facing the prospect of sewer bans. Your proposal will also result in retarding the growth essential in the President's perspective on how we finance our way out of debt, and that is, through growth in our economy. Many municipalities will just have to slow down in terms of their own development.

We have, in New Jersey, over $3 billion in unmet needs for eligible facilities, just to make the point to you, Mr. Ravan, as you review the proposal you have made to us.

The EPA task force report suggested a 10-year program to establish a revolving loan program; is that correct?

Mr. RAVAN. Yes, sir.

Senator LAUTENBERG. What was the basis for 10 years as opposed to any other period?

Mr. RAVAN. Senator Lautenberg, the time period that is, in fact, tied to the amendments of 1981. Those amendments, as you know, were fully implemented October 1984, and some sort of time period looking toward the period 1981 to 1991 or, indeed, 1984 to 1994 seemed to us to be at least a good study period for the work that we were doing with regard to that task force.

Senator **Lautenberg**. So, therefore, if there is any challenge to that particular time cycle, it is whether or not 10 years will provide the funding adequate to the States to fund the necessary treatment work, something that concerns me a great deal.

This goes back to an earlier question. What effect would the switch from grants to the revolving loan fund suggested by the report have on local sewage rates? Do you know? Do you have any idea what that might be?

Mr. **Ravan**. Senator, clearly, the so-called sewer ordinances and/or sewer rates or user charges as they are variously termed in the trade are going to have to increase. One of the aspects of a large Federal assistance program, as had been the case, we have noted, is that user fees, as such, for the sewer service provided are, indeed, low, and in my opinion, too low.

Senator **Lautenberg**. Do you think the users would agree with you?

Mr. **Ravan**. Some users will disagree heatedly because they have experienced user fees, especially on the sewer side, in past periods of this program.

However, my own experience over this same period of time, having been involved with this program both publicly and privately since 1971, tells me that America's best bargain today is, indeed, the clean water that we have provided, and, in fact, especially in our urban areas, we should, indeed, be willing and ready to pay for the service provided at the local level.

I don't believe that the consumer gets his or her best deal by arriving at those dollars through the Federal system.

Senator **Lautenberg**. Except that what we have is a national problem. The effects of having untreated or improperly treated water flowing into the estuaries and ultimately into the total aquatic system is something that affects everybody, and you just can't restrict its result to the local community.

One could take a narrow view—it has been done lots of times—to say, "To the devil with it. We will just get rid of it," and eventually it winds up some place else.

So, therefore, it does cause the Federal Government to be involved in a very significant way. I don't think there are bargains out there when we look at what we have to pay for municipal services, whether it is the safety service or trash removal, et cetera. It costs communities a lot of money to deal with problems of this nature and especially one that affects the world we live in. I think it is pretty easy to say that the fee has got to be paid whether it is paid to Government and then transmitted back or whether it is going to be paid by way of user fees directly.

There is no fee disposal, as they say.

The report says that the heaviest financial burden for wastewater treatment would fall on the older urban areas; correct?

Mr. **Ravan**. Yes, sir.

Senator **Lautenberg**. It says many communities in that report cannot afford to meet all of the costs for wastewater treatment facilities through user fees alone. How did the task force proposal address those problems?

Mr. **Ravan**. We saw, Senator, that there would be generally, three categories of financing for the future.

First, the categorical grant under title II which is presently available for some phaseout period of time would, indeed, provide, regardless of whose number you use, some $8-plus billions for that remaining program.

Second, there would be the need for, because of the conclusion you have just pointed out, a State revolving fund and/or some sort of mechanism for assistance for the local communities, especially those who are, in fact, unable to meet the full load.

Then, third, there would be, as Senator Symms pointed out, an opportunity for the private approach to meet the wastewater treatment needs. Those three categories are what we suggest.

Senator LAUTENBERG. We would hope that those on whom the burden falls can handle their fair share of it. I am not optimistic that we can do that, and I think that the communities are going to be in for some shock when they see what their responsibility is going to be: their costs for providing these. Many of these communities have problems with credit anyway, and to be issuing bonds supported by a revolving fund to whom they have to repay their obligations can seriously strain the creditworthiness of the ability of these communities to borrow to handle this and repay the revolving fund.

Thanks, Mr. Chairman.

Senator CHAFEE. Senator Mitchell.

Senator MITCHELL. Thank you, Mr. Chairman.

Mr. Ravan, in a recent report to Congress, the EPA indicated that as much as half the remaining water pollution problems are attributable to nonpoint sources of pollution; that the administration has put forward a program which provides no grant support or practically no staff for dealing with nonpoint pollution. Beyond that, the Agency has opposed amendments to the act to address nonpoint pollution.

First, let me ask you: Don't you agree that nonpoint pollution is a serious national problem?

Mr. RAVAN. Yes, sir, I do. I would refer to those statistics, if I may. I believe 17 of our States have remaining problems in attaining water quality standards. In over 50 percent of those 17 States, the problem is nonpoint sources.

Senator MITCHELL. Is it not a problem in the other States?

Mr. RAVAN. Yes, sir; there are areas where nonpoint source is the problem.

Senator MITCHELL. I understand that the Agency recently developed a nonpoint pollution policy which calls for better coordination of Federal agency activities related to nonpoint pollution control.

Does that policy provide for any mandatory action by Federal agencies to assure these programs and budget will implement the policy, or is it essentially a voluntary program?

Mr. RAVAN. It is, in fact, essentially voluntary.

Senator MITCHELL. What we have here is clear evidence of a problem, the EPA not acting, and if the attempts to implement the voluntary program don't succeed, and I must say, past experience with that has not been very good. I think it is time to do something about it, and I think personally that the nonpoint source provisions of S. 53 are a good start.

Now, several environmental groups have recently suggested to this committee that we consider making implementation of nonpoint pollution control problems eligible, construction grant funds, if the nonpoint program would be cheaper than the cost of advanced wastewater treatment. Would you support funding of nonpoint programs with title II funds if needed pollution control could be achieved at a lower cost?

Mr. RAVAN. Sir, given the administration's proposal for phasing out of the construction grants program, I doubt that it would be a good time to add new eligibilities to that particular entitlement. That does not take away from the necessity to address nonpoint source pollution broadly across the Nation.

Senator MITCHELL. That last sentence hardly squares with the policy that you have proposed and your position by any effort on the committee to do it.

Mr. RAVAN. I believe Senator, if I may just address that policy for a moment, what we found, again, in a very concentrated effort over the past 12 months on nonpoint source was that if, indeed, the Federal Government first; and perhaps State governments thereafter; and local governments thereafter, would simply utilize the dollar as well as other resources that they have presently available to them, we could take substantial steps toward the alleviation of nonpoint source pollution. As you know, the five major categories of nonpoint source have to do with constituencies across the Nation who, I believe, indeed, can do something about nonpoint source pollution. And, if the Federal departments, with available resources, would simly tune the application of those dollars so that nonpoint sources would first be eliminated or alleviated, we would be a long way toward controlling our nonpoint source problems.

I am not suggesting to you or anyone else that this will cure our problem, but it will certainly be better than anything else we have seen today.

Senator MITCHELL. Of course, wishing for somebody to do something is a long way from having them do it. I think overall, your comments really support the need for some action as proposed in the legislation to which I referred. I would like, if I could because of time constraints, to go on to another area, and that is the permit terms.

The proposal for extending of NPDES permit terms from 5 to 10 years has been an area of considerable debate and concern, as you know. EPA and the industry argue that longer terms are needed to prevent permit backlogs and provide relief.

On the other hand, environmental groups and other groups are concerned that the delay will slow the implementation of toxic controls. Do you agree that the 10-year permit will delay implementation of toxic controls? If so, what is your comment on the proposal on the idea of limiting 10-year permit terms to those permits which address conventional pollutants which retain a 5-year period for toxic controls?

Mr. RAVAN. Senator, I believe the 10-year permit, first of all, is a good idea. I am basing that on experience in the program today, as well as what we know and understand about the implementation of BAT controls first, and then toxic additional controls thereafter. Also, I think it is important for the subcommittee to understand that our proposal suggests a 10-year permit only in those cases where, in fact, we know all there is to know about that discharge.

In any other case where it was necessary to meet water quality standards, effluent toxic controls, dual information availability, et cetera, we would, in fact, do that. I believe the only gap in this is a certain amount of, if I may use the term, faith that we would, in fact, do that.

I would like to just tell the subcommittee again that EPA is, in fact, committed to this. I believe the 10-year permit is a good idea when implemented along the lines that we are proposing.

Senator MITCHELL. Would you have any problem with us writing that into the law?

You said you are going to do it anyway. You obviously wouldn't object to putting it into law, would you?

Mr. RAVAN. Senator Mitchell, we are, in fact, suggesting certain language to go along with the 10-year permit.

Senator MITCHELL. I would like to turn to another area of the turnkey project. The State has undertaken a number of treatment construction projects without Federal assistance. The State found that they are able to substantially reduce project costs by allowing a single contract for design and construction of a plant termed, as you know, a turnkey project. In one case, I am advised, preliminary cost assessment for the design and construction of $6 million was reduced to $2½ million when bid as a single project. Other States have had similar experience. Yet EPA will not allow single contracts for design and construction in federally assisted projects.

My question is: Does the EPA have substantive objection to turnkey project management, or is its opposition based on a belief that there is a lack of legal authority to authorize such a project?

Mr. RAVAN. Senator, I don't believe this comes from a legal basis, no, sir. I do, in fact, believe that the administration's proposal for the phaseout of our participation, is premised on directing those funds to ongoing present-day projects.

Senator MITCHELL. But, Mr. Ravan, the purpose of the phaseout is to save money. Here is a way, which I gather you do not dispute, which can save money. Yet you are opposing it, which seems to me to be rather contradictory.

Mr. RAVAN. Not necessarily, Senator. Your State's experience in this program actually does differ from all reports that you can get with regard to so-called turnkey projects. We have found, in fact, especially with regard to smaller communities, that having separate design and construction firms, and sometimes even a separate operation and maintenance firm is, indeed, a safeguarded approach to achieving what you really want, which is, cost-effective achievement of permit effluent requirements.

Senator MITCHELL. That is a different argument. Now what you are saying is that there is a factual disagreement, that is, you disagree that savings can be made by having turnkey projects.

Mr. RAVAN. I think each project should be judged on its own merit with regard to turnkey. I do believe that different States and different localities actually have different experiences from the one you described.

Senator MITCHELL. If you believe that, then implicit in your statement is that in some cases, there have been savings, and I guess what I am saying is, why not have that option so that at least in the cases in which it appears or can be agreed that there will be savings, the savings will be accomplished? I mean, $3½ million is perhaps a small sum in a multibillion dollar program, but it is still taxpayers' money, and if we could save just $3.5 or $4 million on a project here or there, it is a savings that I think everyone would be interested in.

Mr. RAVAN. Let me categorize that, Senator Mitchell. I don't think we are philosophically against any savings that might be incurred. I believe also that States, especially as they take on not only the responsibility but the burden in accountability for these projects, should have maximum flexibility. If they want to do turnkey projects in a particular State, they ought to have that opportunity.

Senator MITCHELL. If I could say why? You see, what they don't want is a program that works better because then it is harder to phase it out, and since their primary objective is phasing out the program, they really don't want to consider proposals that will make it work better, because the better it works, the harder it is to eliminate it. That is what is troubling about this.

Mr. RAVAN. Again, Senator, I have no philosophical difference with you. In fact, I would like to see the States, as they take on this program, design the flexibility into their program that they deem appropriate.

Senator MITCHELL. Are you familiar with the design/construction provisions of H.R. 8, the House authorization bill?

Mr. RAVAN. No, sir, I am not, but I can look at them.

Senator MITCHELL. Would you take a look at them and then provide us with a response in writing as to whether you think those are acceptable?

Mr. RAVAN. Yes, I will.

Senator MITCHELL. Thank you, Mr. Chairman. I have some more questions. I will wait for my next turn.

Senator CHAFEE. Mr. Ravan, when we put the 10-year amendment on permits, we thought we came up with a good program. Many permits under this would get a 10-year lifespan so that both the permit-writing agency, EPA, and the permit holder would save some resources. That was the objective of it.

On the other hand, permits would have to be reopened and revised if new effluent requirements or water quality requirements came into force. So we wouldn't lock in inadequate controls over 10 years. I think you mentioned that.

Now, some people are telling us that in many cases, permits would not really be reopened, so that we have just given away the story without getting anything in return.

I am confident that this is going to be raised in the next 2 days of these hearings. What do you think about this?

Mr. RAVAN. Mr. Chairman, I believe that the negative side of that arugment, that is to say that the 10 years would not be reopened, is simply a question of how EPA and the States——

Senator CHILES. That is the problem. It is the States. Let's set aside EPA for a moment. Let's assume that EPA would reopen them, but the argument is that the States are very unlikely to promptly revise all the permits on a river when the water quality standards are upgraded. Instead, they will write the new permits one at a time when the old ones expire. That is the argument you are going to get.

Can EPA force the States to reopen the permit?

Mr. RAVAN. Yes, sir, I think if we saw that as a requirement we could. Obviously, the regulations that are going to go along with the 10-year permit, will I believe provide a substantial impetus for good faith actions on the part of the State.

Senator CHAFEE. Beckly, do you have any comments on that?

Ms. HANMER. I would just like to say that we don't regard 5 or 10 years as an either/or proposition. We would see developing the process through regulations to specify appropriate permit terms. We may limit, for example, a full 10-year permit to certain categories of dischargers whose discharges are not likely to change, who represent well-known situations, or situations where, when we get ready to reissue the permit, we are not likely to make many changes. So we would, I think, want the flexibility to choose permit terms of less than 10 years.

We don't want to be under the pressure of just having people come in and say, "You own us 10 years." I think the way we would do it would be through reopenings. I think our preference would be for discretionary rather than mandatory reopenings, which would be defined through regulations, permit terms, and appropriate terms for reopening. Those regulations would apply equally to the States.

Senator CHAFEE. This is obviously going to be a major bone of contention in the next 2 days. Our problem is that the States have such a backlog that the concern is—and many of those who I think will testify will raise this point—the States have a large backlog and they are just not going to get to it. Wait until the 10 years is up, and the automatically reissue some kind of a permit.

Ms. HANMER. The staggered term I mentioned is one way to deal with the situation of the cyclical workload. If we set permits we would set different sections, and different types of permits for different permit extension terms. Then we could even up the workload, which would help both us and the States.

Second, the States, I think, went into a period, as we did, in which permit writing wasn't very important. We have been getting some impressive results, though; not perhaps full results, but very impressive results once we started to put a priority on this activity. The States have doubled their permit-writing activity from last year to this.

Senator CHAFEE. OK. I suppose you could have different permits, also, for conventional, toxic pollutants, too.

Ms. HANMER. That is how we would do the categorization, basically, by types of discharges.

Senator CHAFEE. All right, Mr. Ravan, what steps are you taking to ensure that new regulations are being implemented? I am particularly referring to the water quality standards, and we had a go-around, as you recall, with the Administrator last year on this and some revisions he did not want us to implement into law. What I am talking about specifically is with respect to the adoption of criteria for toxic pollutants and the mandatory stream-upgrading requirements.

Mr. RAVAN. Senator, we feel very confident and very strong with regard to this water quality regulation. I think we did, in fact, keep good faith with the Congress and our duties to the American people in the publication of that regulation. We continue to take the actions, I believe, which are necessary to clearly indicate to the States as well as the dischargers that we fully intend to carry out the water quality regulations.

We briefed Congress recently on section 24, where we are, indeed, withholding grants funds because the water quality standards have not been reviewed adequately in a 3-year period as required. We, in fact, didn't necessarily coin the term, but it nevertheless exists that there is a "watch list" where water quality standards, could, in fact, become of such major concern that you would pull the program.

We believe that in future years, this water quality regulation is going to be strictly and properly enforced. We are going to be taking steps, along with the States, to ensure that good water quality standards are maintained and will included the toxic requirements as they become known to us.

Senator CHAFEE. We understand that some States want to downgrade the designated use of their streams because of lowflow conditions. Could that be permitted under the present regulations, the downgrading of those streams?

Mr. REVAN. Senator Chafee, there are six methods or categories by which a State could and should consider the water quality sandards any any necessary, revisions of a water quality standard whether, in fact, it would be upward or downward. One of the those is, indeed, a low-flow condition, which is characteristic of some of our Western States, especially in the upper reaches of very small streams in the summertime conditions.

If, indeed, the scientific evidence was clear, both to the States and to ourselves, that a low-flow condition was, indeed, the problem, many of these streams—could, in fact, be downgraded. We are working on this particular item with some of the States involved, and we simply want to assure you and them and anyone else that this will be one basis of scientific finding.

Senator CHAFEE. Yes, but the objections, as I understand them, are that to get the downgrading that they seek, I guess it is western states based on the low flow, that they have to go through a public hearing process, and they say this is too long and complicated. They are advocating that we give the States the right to weaken the clean-up controls which you set and do this through the permit process. Isn't this a back door way of downgrading water quality standards?

Mr. RAVAN. Sir, let me address those two points in particular. Let me take permitting first. This, to me, is sort of getting the cart before the horse. The permit is an enforcible instrument; it is a basic tool of the water law itself, and it is not intended as the instrument by which we change water quality standards. It is just the reverse. The permit should be used to achieve the water quality standard that has been previously set.

If one now wants to deal with the water quality standards as set and approved, as set by the State and approved by EPA, let's deal with that. If, in fact, that requires a public process, I think that is good, and I believe that a good faith action on the part of the State, other permittees involved, and EPA will alleviate the problem.

It is, indeed, difficult to go before a "public" with the pronounced intention of "downgrading" the water quality standards, whereas it may, in fact, be necessary to identify to the public that quite honestly, a mistake maybe has been made, and that on the basis of scientific evidence, in an unbiased form, such as a public hearing, we can arrive at the facts and base our decision on the facts.

Senator CHAFEE. Do I understand you are saying that you think we ought to stick by the public hearing process?

Mr. RAVAN. Yes, sir, absolutely.

Senator CHAFEE. Well, good. Thank you.

My time is up. Senator Lautenberg.

Senator LAUTENBERG. Mr. Chairman, I will try not to take too long. I, too, want to make certain that you are aware of my concern about the extension of permits. It seems that we all share that, because it is a potential for having an adverse effect on water quality. Are you familiar with a National Wildlife Federation study that suggests that 18 States only review water quality standards when they renew permits? Is that familiar to you?

Mr. RAVAN. No, sir; I'm not familiar with that statistic.

Senator LAUTENBERG. I think it would be of interest for you to get it. It shows how little attention there is paid to these things. Do many States have water quality standards for toxics other than heavy metals, do you know?

Mr. RAVAN. Miss Hanmer will address that point for you, Senator.

Ms. HANMER. Very few States. Most of the State standards have limits on certain heavy metals; a few have limits on others, such as a few pesticides. By and large, they do not have a lot of specific chemical limits.

However, all State standards do have a narrative provision that limits toxics in toxic amounts, which allows us, when we are permitting, to make case-by-case decisions if we have a discharger whose discharge causes toxicity in toxic amounts. We can deal with that in the permitting context even if we don't have all the toxic limits and the standards we would like to have. And we are trying to do so.

Mr. RAVAN. Yes, sir; we are.

Senator LAUTENBERG. To a favorite subject of mine, again, Mr. Ravan, EPA has so far promulgated only skeletal criteria governing the management and disposal of sewage sludge from publicly owned treatment works. What is the current status of EPA's sewage sludge guidelines?

Mr. RAVAN. Senator, we are, indeed, finally happy to report that we are on a course and we are making good progress. We have divided, as you know, the sludge regulations into two broad categories: One, the institutional regulations necessary to set up sludge programs. Second the so-called technical regulations describing to the permittees what we might find acceptable practice with regard to the disposal techniques. The first regulation, the so-called institutional regulation, will be proposed this year. I will ask Mr. Whittington to give you the specific month but it will become final in 1986.

The technical regulations, which is, indeed, the more complicated regulation, will be proposed next year in 1986 and become final some 12 months thereafter.

Bill will now give you the specific month.

Mr. **Whittington**. It will be proposed in August, Senator.

Senator **Lautenberg**. Proposed in August?

Mr. **Ravan**. And the technical regulation would come in March.

Voice. June.

Mr. **Ravan**. June 1986.

Senator **Lautenberg**. I take it that that is a schedule that you think meets the concerns that we have? Why is it that there is so much by way of sequential study, benchmarks, et cetera, that you have to pass?

Mr. **Ravan**. Senator, I believe that, as I have testified before to this subcommittee, your patience has been commended by us on this subject. We have, indeed, been slow with regard to this sludge question. I believe approximately 18 months to 2 years ago, the previous Administrator of the Agency gave clear direction and accountability. He held the office of water accountable for those regulations. We are on a very closely managed schedule for the publication. We are keeping members of the committee well informed on this. I do not now perceive any further delays. It is very important that this Agency be as nearly correct with all the facts as we come forward with the regs.

Senator **Lautenberg**. Right.

Senator **Chafee**. Senator, could I intervene one moment, please? I have to go. Senator Mitchell is good enough to take over and wind up the hearing. Tomorrow we will start at 9:30, and the following day, also, at 9:30, with the objective of finishing up before lunch. I want to thank everybody for coming. Thank you, and thank you, Senator.

Senator **Lautenberg**. Mr. Chairman, I will go on for the brief minute more I promised you and not more than that.

What guidance might these regulations give to those POTW's which currently have no land-based alternatives for disposing of sewage sludge and they are dumping sludge into the ocean? Do you have any feel for where we are going with that?

Mr. **Ravan**. Senator, I believe that there are at least five major methods for the local community which would be regarded as acceptable practices. There will always be a continuing debate as to whether or not a local community has any on-land options. With further public discussions, I believe incineration, will become an available option. Obviously, included in that option is the question of cost, and whether cost will, in fact, drive some communities to continue to look toward ocean disposal of sludge.

One thing that is clear to us is that, paraphrasing "The Ancient Mariner," if I may, there may be sludge, sludge everywhere and you won't know what to do with it, unless EPA does, in fact, come forward with this guidance for the cities.

I would hope, and I sincerely believe that the oceans are not going to end up as the path of least resistance. Further, all of the pretreatment study and work that has gone on to date inside the Agency along with the regulated community will help to alleviate some of the serious problems that we face with disposal of sludges in the past.

Senator LAUTENBERG. Would you agree that the ocean, as a final dumping ground for sludge material, can only survive as a transitional opportunity and that in the long run, we ought not to think of that as an alternative at all?

Mr. RAVAN. I certainly agree, Senator. As I have said many times publicly and testified before this committee and others, I would hope that the environmental ethic that the American people have developed on land is not disposed of as we march off to the oceans.

Senator LAUTENBERG. Yes, a little out of sight.

Mr. RAVAN. Yes.

Senator LAUTENBERG. That is a little out of sight. And, so to speak, out of mind. Last Saturday, as I stood on the New Jersey beaches, I was presented with a gift by a local fisherman of a gallon jug of material taken out of the ocean that was so thick that it almost wouldn't come out of a widemouthed jug, and it was the ugliest material you ever saw. You wouldn't put your toe in that water, much less immerse yourself totally in it. I know that there is a decision coming on the removal of the current 12-mile sludge dump site off the New Jersey coast to a much further area, one that has better dispersal quality, much greater depth, and as a temporary measure, I would like to call it, would serve better for the acceptance in the ocean of this material.

It was originally an April 1 deadline. Do you know when that is coming, Mr. Ravan.

Mr. RAVAN. Senator, I have committed to you and to others that we are going to meet the April 1 deadline.

Senator LAUTENBERG. Is that so? I thought Lee Thomas, when he was here, said it might slip. But I would take your word anytime that we are on a track to have a decision by April 1 on whether you recommend the closing or not of that 12-mile sludge dump site.

Mr. RAVAN. I believe I have an exciting 7 days ahead of me.

Senator LAUTENBERG. I think so. But I trust your integrity. You said it once. We are not playing Simon says. You can say it again and we look forward to hearing that word from on high. Thanks very much, Mr. Ravan. Thanks, Mr. Chairman.

Senator MITCHELL [presiding]. He trusts your integrity and takes your word because you agree with him.

Senator LAUTENBERG. He better.

Senator MITCHELL. If you start disagreeing, then your status will change.

Senator LAUTENBERG. We would hate to see that Atlanta region without any funds to operate.

Senator MITCHELL. Mr. Ravan, I have two other areas I would like to address with you. The first is protection of lakes. As you know, there is evidence of serious pollution problems in fresh water lakes. A recent survey by the Association of State and Interstate Water Pollution Control Administrators found that lakes are the only water resource to record significant declines in water quality between 1972 and 1982. Water quality declined in four times as many cases as it improved.

A survey by the North American Lake Management Association found that reported lake pollution problems have increased about fourfold since the early 1970's. Despite this evidence, EPA has proposed to end funding for the Clean Lakes Program for the past several years, and in every case, of course, as you know, Congress has restored funding for the program. So I have really a two-part question: Are there any changes to the current program you feel might be appropriate to make it work better, and if we were to make those changes, could we not proceed with some type of reasonable program given the problem rather than continuing this impasse in which you request no money and we insist on giving you money which you say you don't want?

Mr. RAVAN. Senator, I am not today and I see no occasion in the future where I will be suggesting changes to the Clean Lakes Program. The fact of the matter is, it is the 50 percent grant that has induced a lot of community spirit. Especially on some of the urban localized primary recreation kinds of lakes, there has been good progress.

I do not differ with you on the characterization of the funding. The difference is primarily one that the Clean Lakes Program was supposed to be a demonstration program. We have, I think now, demonstrated to the tune of some $87 million in the program, and the administration continues to feel that it might be appropriate, along with the other budget reduction efforts, to allow the local communities, where they feel that this is a priority, to go ahead and provide funding to complete the project.

Senator MITCHELL. So if I understand what you are saying, it is that you do not disagree that there is a problem?

Mr. RAVAN. I do not disagree with that.

Senator MITCHELL. With what I have stated? You do not disagree that this program has worked to alleviate the problem where it has addressed it?

Mr. RAVAN. That is correct, sir.

Senator MITCHELL. Your desire to terminate the program is based upon two facts. The first, obviously, the dominant fiscal concern?

Mr. RAVAN. Yes, sir.

Senator MITCHELL. And, second, that it was supposed to be a demonstration program and, therefore, should be limited to that, notwithstanding the first two statements that I made. Is that a correct statement of your position?

Mr. RAVAN. Yes, sir; that is correct.

Senator MITCHELL. Fine. As you know, many lake pollution problems are attributable to nonpoint source pollution. I would like to have you address for me, and perhaps you might want to do this in writing after giving it some thought, how we might coordinate the clean lakes and a nonpoint pollution program.

I recognize that you are not for either one of them in the current status, but what I am asking you to do is to assume that the Congress will be and help us structure a workable program. I think that is a fair request to make. You have stated a position which we understand, and insisted on a program. So now what I am saying to you is if that is the case, notwithstanding your opposition to it, why don't you give us your thoughts on how we might make it a better program, if we can do so?

Mr. RAVAN. Senator Mitchell, I would like to do that. If I understand what you would like for me to do, I can exclude the question of how that program might be funded.

Senator MITCHELL. That is right.

Mr. RAVAN. And at what levels that might be funded.

Senator MITCHELL. All right.

Mr. RAVAN. I would be happy to supply that for the record.

Senator MITCHELL. That would be very helpful for us. We disagree reasonably, and you have a very agreeable staff and yourself, we may draw different facts and a different policy conclusion, but in all of our interests, and the interests of the American people, if we act contrary to that, contrary to the policy you express, it is that we should do so in the most reasonable, productive, and efficient manner.

Mr. RAVAN. Yes, sir; I will be happy to do that.

Senator MITCHELL. Finally, I would like to turn to the area of administrative penalty. Proposed to the act are areas which would substantially increase penalties for violations. In addition, the EPA would be given the authority to assess administrative penalties of up to $10,000 a day. I believe that you do need broad and effective enforcement powers to implement the act.

But as a former Federal judge, you will forgive me for having some concern about the assessment of penalties upon American citizens outside the judicial process, especially since $10,000 there is a very substantial penalty. There are many very serious crimes which can be committed which have substantially smaller financial penalties than that. I would like to ask you, with respect to that, and I want to make clear I am not at this point opposed to it, but I think I need some more details and more justification. I will ask you a series of questions which you can either address now or may wish to address later in more detail.

Those are: Has the Agency formulated any plan about how you will manage an administrative penalty program? Are there activities, are there areas of activitiy, in which such penalties are particularly necessary or appropriate?

Finally, how liberally within the Agency would authority to assess such penalties be delegated? What person or persons would have the authority to do this?

Mr. RAVAN. If I may, let me address those three questions very briefly Senator, and then I will provide detail for the record. Lacking the authority, we have not come forward with any particular formal written-down management process. However, management of similar authorities in other environmental statutes, has given us a clear direction for the future, and one might want to look at those statutes to see how we might well apply such authority under the Clean Water Act.

On the second point, yes, there are categories where the administrative penalties provision would be particularly appropriate. For example, the admission on the part of the discharger permittee, of an unintentional discharge. We would look at the administrative penalty provision as a quick method to bring that case to conclusion. I think it would be a very fair conclusion, saving both parties, the taxpayers and the dischargee, money in the process. We have no intention of disregarding our responsibilities to go before a Federal judge, when the case is appropriate and we would be asking for an increased penalty if we did so.

There is a very strict, and, I think, clear path of authority within EPA for discharge of these duties, and those the Administrator, and the Regional Administrator, and no one of lessor status in the EPA, would be given the authority to carry out the provision.

Senator **Mitchell**. I want to emphasize, I am not trying to create another lawyer's WPA here. The lawyers in the audience, and I know there are some here, because every American audience of two or more persons has at least one lawyer. But I do think that this is a very substantial authority.

Mr. **Ravan**. Yes, sir; it is.

Senator **Mitchell**. To assess an inquiry penalty of up to $10,000 a day, and I want to be assured that it will be exercised within carefully delineated and circumscribed procedures in a way that achieves desired result without infringing on the rights of our citizens. What you are saying is really, it would be the Administrator and the regional administrators who would possess that authority?

Mr. **Ravan**. Yes, sir; that is correct.

Senator **Mitchell**. And you will give me in writing the areas of activity in which you deem it particularly necessary and appropriate and some guidance based upon, I gather, the operation of a similar authority in other statutes as to how it would operate, some form of management plan?

Mr. **Ravan**. Yes, sir; I will do that.

Senator **Mitchell**. Thank you very much, Mr. Ravan. You and your associates have been a very forthright and knowledgeable witness, making a persuasive case even when you don't have a good argument.

Anybody can make a good case when they have got a good argument. It takes real skill to do it with some of the arguments you possess. Thank you very much.

The hearing will be adjourned.

Mr. **Ravan**. Thank you very much, sir. I appreciate that.

RESPONSES TO ADDITIONAL QUESTIONS

Senator Stafford

Question: The Administration bill provides for permits to implement and enforce sludge criteria for toxics. S.53 does not contain such a provision. Please explain why you think this provision is needed.

Answer: The Administration bill provides authority to implement and enforce sludge criteria through permits because the present legislation provides no permit mechanism to implement the guidelines of section 405(d) of the Clean Water Act. A permit of some type would give EPA and the States a mechanism to more closely control the management of sewage sludge. It would also provide a better way of informing the regulated community of their responsibilities to comply with the Section 405(d) guidelines. Further, a permit program would help define the authorities of EPA and the various State agencies involved and provide for Federal review of State-operated programs to ensure adequate coverage of all Federally-regulated use and disposal practices.

The Agency currently does not have the legal authority to impose sludge use and disposal criteria issued under section 405(d) of the Clean Water Act through NPDES permits. However, some ten States currently use their own authority to supplement EPA authority and include sludge criteria in NPDES permits they issue under delegated programs. Some of the other States control sludge use and disposal practices through other types of permits or less formal control mechanisms.

The Administration bill would authorize sludge criteria to be incorportated into NPDES permits, other Federal permits, or State permits issued under a program approved by the Administrator. This provision would provide EPA and the States with flexibility to control sludge through the most appropriate mechanism.

Senator Chafee

Question: How much have States and municipalities expended between 1972 and 1985 for wastewater treatment facilities?

Answer: The most accurate and revealing response should be in constant dollars to eliminate the inroads inflation has made on purchasing power. Between 1972 and 1983, State and local expenditures totaled roughly $23 billion in constant 1982 dollars.

Senator Chafee

Question: Have any states set-aside or used more than 4% of their allotment for I/A project funding?

Answer: Yes. Four states used more than the mandatory 4% set-aside for fiscal year 1983 apropriations, (DC - 7.5%, TN - 7.0%, CA - 4.7%, and SD 4.2%). Three states increased their set-aside for fiscal year 1984 funds due to be obligated by September 30, 1985, (FL - 7.5%, MN - 4.4% and NM - 4.5%). Seven states increased their set-aside for fiscal year 1985 funds due to be obligated by September 30, 1986, (AK - 7.5%, FL - 7.5%, MN - 4.5%, MT - 7.5%, ND - 5.7%, NV - 7.5% and TN - 7.5%).

States	4% Mandatory Set-aside	FY84 Set-aside	FY85 Set-aside
MN	1,799,000	1,964,702	2,023,380
MT	477,000		893,700
NM	477,000	530,640	
ND	477,000		676,580
NV	477,000		893,700
AK	585,000		1,098,150
FL	3,303,000	6,193.261	6,193,261
TN	1,422,000		2,665,275

Senator Chafee

Question: What additional classes and categories of discharges are candidates for general permits?

Answer: Classes or categories are selected for general permit issuance after consideration of the waste effluent characteristics, the effluent control technology, the requisite monitoring, and the number of individual point sources that would be covered by the general permit. Where a significantly large number of dischargers have similar discharge, technology and monitoring characteristics, then a general permit for that class or category can be developed.

The following classes or categories of discharge are candidates for general permits:

- Trout fish hatcheries
- Minor publicly owned treatment works (POTWs)
- Ballast water treatment facilities
- Water supply facilities
- Army water purification mobil units
- Placer mines
- Stripper oil wells

Senator Chafee

Question: What is the status of EPA's issuance of effluent guidelines?

Answer: The current status of our effort to promulgate the effluent guidelines as covered by the modified Consent Decree (October 26, 1982; August 2, 1983; January 6, 1984; July 5, 1984; and January 7, 1985) is as follows: regulations for 23 industrial categories have been promulgated; regulations for 5 other industrial categories have been proposed and remain to be promulgated; and regulations for a segment of three industrial category remain to be both proposed and promulgated. (See attached schedule.) Regulations for 10 other industrial categories covered by the Consent Decree have been excluded from the regulations under provisions in Paragraph 8 of the Consent Decree.

2/22/85

INDUSTRIAL TECHNOLOGY DIVISION
STATUS OF THE RULEMAKING SCHEDULES

- 23 PROJECTS ARE PROMULGATED:

	Proposal*	Promulgation*
Aluminum Forming	11/82	09/83
Battery Manufacturing	10/82	02/84
Coal Mining	12/80	09/82
Coil Coating (Phase I)	12/80	11/82
Coil Coating (Phase II)	01/83	11/83
Copper Forming	10/82	08/83
Electrical/Electronic Components (Phase I)	08/82	03/83
Electrical & Electronic Components (Phase II)	02/83	11/83
Inorganic Chemicals (Phase I)	07/80	06/82
Inorganic Chemicals (Phase II)	09/83	07/84
Iron & Steel Manuf.	12/80	05/82
Leather Tanning & Finishing	06/79	11/82
Metal Finishing	08/82	07/83
Nonferrous Metals (Phase I)	01/83	02/84
Ore Mining	05/82	11/82
Petroleum Refining	11/79	09/82
Pharmaceuticals	11/82	09/83
Plastics Molding & Forming	02/84	12/84
Porcelain Enameling	01/81	11/82
Pulp & Paper	12/80	10/82
Steam-Electric	10/80	11/82
Textile Mills	10/79	08/82
Timber	10/79	01/81

- 5 PROJECTS TO BE PROMULGATED:

	Proposal*	Promulgation*
Foundries	10/82	06/85 Σ
Nonferrous Metals Forming	02/84	06/85 Σ
Organic Chemicals and Plastics & Synthetic Fibers	02/83	03/86 Σ
Pesticides	11/82	08/85 Σ
Nonferrous Metals (Phase II)	05/84	07/85 Σ

---

* Date signed by the Administrator.

Σ Revised schedule approved by the Court (October 26, 1982; August 2, 1983; January 6, 1984; July 5, 1984; and January 7, 1985)

Senator Chafee

Question: When a variance application is filed, how does EPA currently address the applicable statutory deadline? Are there time limits for submittal and processing of a variance application? Are BAT, BCT, and secondary treatment effluent limitations in effect for enforcement purposes while a variance application is pending? If an up-to-date permit has not been issued, has a pending variance application prevented the permit from being issued? For §301(h), 301(g) and FDF variances, provide the average and maximum time (calendar) it has taken to issue a final decision. Provide the average and maximum personnel and contract resource costs associated with the processing of §301(h), 301(g) and FDF variances.

Answer: (The following response is for §§301(c), 301(g), 301(h) and FDF variances and §301(k) time extensions.):

The filing of a variance request does not impact the applicable statutory deadline for compliance with BPT, BAT, and BCT. However, there are at least three reasons for delays in compliance with permit conditions due to pending variance requests: (1) continuation of old permit, or discharge without a permit, during consideration of the variance request; (2) non-enforcement of permit conditions for the variance pollutants, during the pendency of the consideration of the variance request (the discharger would still be subject to citizens suits); (3) stay of permit conditions during the appeal of a decision on the variance request.

Time limits do exist for submittal of a variance application. In the case of §§301(c), 301(g) and 301(h), the time limitations are based upon the statute. The time limitations appear below.

Variance		Application Deadline
301(c) and 301(g)	Initial:	September 25, 1978, for pollutants controlled by BAT guidelines promulgated before December 27, 1977, otherwise 270 days after promulgation of the effluent limitations guideline. No initial request is necessary for variance requests from BPJ limits.
	Complete:	By the close of the comment period on the draft permit. (Extension of up to six months allowed.)
301(k)		By the close of the comment period on the draft permit.

FDF (Direct)	By the close of the comment period on the draft permit.
FDF (Indirect)	180 days after effective date of the categorical standard or 30 days after final decision on a categorical determination.
301(h)	December 29, 1982

There are no statutory or regulatory time limits for the processing of variance applications.

Generally, the effluent limitations in the current effective or expired NPDES permit are the limitations that are in effect for enforcement purposes while a variance application is pending. For most industrial dischargers, the current permit only contains BPT limitations or was based upon BPJ. Because the variance request may involve levels of treatment required for the most significant (or one of the most significant) outfalls at an industrial facility, it is common practice to delay permit issuance until variance requests are acted upon. However, the States and Regions do have the authority to issue NPDES permits containing the BAT, BCT and/or secondary limitations during the pendency of the variance request. Some States, as a matter of course, issue the permits containing the guidelines limitations, with alternative limitations that will be effective upon approval by EPA of the pending variance request. (In such cases, enforcement of the guidelines limits would not generally be considered appropriate unless and until the variance is finally denied by EPA.) EPA has taken a similar approach in one recent case. In that case, the agency separated the processing of a FDF and 301(g) variance request from the permit and issued a permit with guidelines limitations during the pendency of the variance review.

Section 301(j)(2) does provide for a stay of BAT effluent limitations during the pendency of §301(g) variance applications, so permits could be issued for all other BAT requirements. However, 301(j)(2) establishes a very difficult test, and findings that must be satisfied before a stay of the BAT requirements may be granted.

A pending variance application has often prevented a new permit containing BAT, BCT and/or secondary effluent limitations from being issued. If a new permit were issued when the request was pending, it must contain BAT, BCT and/or secondary limitations including those for which a variance is pending.

Oftentimes, the issues involved in a variance request are closely connected with other permit issues, including State certification, thereby effectively preventing issuance of a permit until final resolution of all issues relating to the variance request.

In the 1970's, EPA generally issued final decisions on many of the FDFs for direct discharger variance requests within one year after their receipt. Currently, the time to issue final decisions has increased. In FY84, final decisions were issued on two Alaska pulp and paper mills (submitted in 1980) and final resolution of two California power plant variances that had been pending since the late 1970's. Of the 56 FDF variance requests for direct dischargers submitted to Headquarters, there have been four approvals, 14 denials, 17 withdrawn and 23 pending variances (FDF variance requests are forwarded to EPA Headquarters only if NPDES States and EPA Regional Offices do not deny them or recommend approval of them). The date of submission to EPA of the 23 FDF pending variances at Headquarters appears below.

Submission to EPA	Number of Variances
Before 1977	2
1977 - 1978	7
1979 - 1980	4
1981 - 1982	4
1983 - 1984	6
Total	23

In addition, there are currently approximately 40 FDF variance requests from indirect dischargers pending in the EPA Regional Offices. Decisions on many of these requests was delayed until the U.S. Supreme Court issued its decision on the availability of FDF variances for toxic pollutants from pretreatment standards. This decision was issued on February 27, 1985. EPA will shortly ask that these variance applicants indicate whether they wish to pursue their original requests.

EPA is beginning to receive and process the final applications for 301(g) variance requests. At this time, there are approximately 90 applications (60 at the State level and 30 at the Regional level). It is expected that the average time for EPA to issue final decisions on these 301(g) requests will be approximately 1/2 to one year, with a maximum of 1 1/2 to two years. EPA could, however, receive a very large number of additional requests upon promulgation of the BAT guideline for the pesticides industry. Processing time could significantly increase in this event.

EPA has received 207 applications for 301(h) variances. At this time, there have been nine approvals, 39 denials, 31 withdrawn and 128 are pending (including 54 tentative decisions). It is estimated that the average time for EPA to issue a final decision on a 301(h) request ranges from one to five years, depending on the size and complexity of the application.

For FDF variances, EPA estimates that it requires an average of 130 workdays (0.50 FTE) for issuance of a final decision; this time is necessary to appropriately evaluate the request due to the fact that all FDF decisions can establish national precedent since interpretations of national guidelines are at issue. Use of contract funds can reduce this figure for an average variance. Some FDFs are very complex and/or controversial and cost much more to process. For example, EPA estimates that over 3.0 FTE workyears were expended for issuance of the final decisions denying the two Alaska pulp mill FDF requests. EPA also expended $228,000 of contract funds on the Alaska pulp mill FDF requests. One of these requests is still in administrative litigation.

For each 301(g) variance, EPA estimates the following use of personnel resources and contract funds.

	Average	Maximum
Personnel	0.75 FTE	3.5 FTE
Contract	$20,000	$50,000

For each 301(h) variance, EPA estimates the following use of personnel resources and contract funds.

	Average	Maximum
Personnel	1.0 FTE	3.0 FTE
Contract	$50,000	$100,000

Senator Chafee

Question: List those industrial categories which potentially might warrant preparation of additional effluent guidelines.

Answer: Below are listed the industrial categories that may warrant additional effluent guidelines. The industrial categories are listed in priority order for further study to characterize problems in more detail and to determine the need for national regulations.

Ranking of Industrial Categories:

The following three categories are believed to be major sources of hazardous or toxic pollutants, based on preliminary information. Major studies are needed to fully characterize their waste discharges, to evaluate control technologies, and to develop national regulations as needed.

Hazardous Waste Treatment Facilities
- Waste Oil Reclaimers

Solvent Reclaimers
- Barrel Reclaimers
- Central Waste Treatment Facilities

Transportation Sources
- Washout Facilities (Barge Washing, Truck and Rail Transport)

Pursuant to work on the following categories, EPA believes there to be significant potential problems with toxic pollutants deserving additional study. In some cases, EPA already has information gathering efforts underway to update existing regulations or to assess toxic pollutants in additional segments of previously regulated industries. These industries include:

Ferroalloy Manufacturing

Metal Finishing (Phase II)
- Galvanizing
- Non-plater Metal Processing Plants
- Machine Building and Rebuilding

On Shore "Stripper" Oil and Gas Wells

Coastal Oil/Gas Drilling Platforms (near-shore)

Organic Chemicals Formulators and Packagers

Pesticide, Pharmaceutical, and Organic Chemical Research Facilities

Senator Humphrey

Question: This Committee has, in the past, encouraged States to assume National Pollutant Discharge Elimination System permitting authority, and a considerable number of States have assumed this authority. It is my understanding, however, that several States have had difficulties in obtaining EPA approval for the delegation of this authority. Could you please explain why States such as New Hampshire have been subjected to frustration and seemingly endless paperwork in acquiring this authority?

Answer: The basic requirements for a State NPDES program are established by sections 402(b) and 304(i) of the CWA. The Act authorizes EPA to approve a State's request for authority to administer the NPDES permit program if the Administrator determines the State has adequate authority and resources to administer and enforce a program which meets the minimum criteria in the CWA and EPA regulations developed under the Act. The CWA requires States to submit a number of documents as part of its request for program approval, including a full and complete description of its proposed program and a statement from the State's attorney general certifying that the State has adequate legal authority to carry out the program.

The amount of work required of a State to develop an adequate program naturally will vary, depending upon the number of changes the State must make to existing legal authorities and the adequacy of the State's initial program drafting. To avoid unnecessary effort, EPA generally works closely with a State in the initial stages of program development to ensure that the State's program meets EPA's minimum criteria.

EPA is not aware of any instances where States have had difficulty in obtaining program approval where the State's program submission met all minimum criteria of the CWA. In a few instances, State program approval has been delayed by concerns over inadequate legal authority or other elements of a program submission. However, EPA and these States have worked together successfully to revise the State programs so as to meet the minimum criteria of the CWA.

The State of New Hampshire has not requested program approval as of this date. The State originally expressed interest several years ago in obtaining approval of its NPDES program. At that time, EPA conducted an initial evaluation of the State's legal authorities and provided the State with comments.

Since that time, EPA and State officials and staff have been discussing the requirements for program approval and EPA has been providing the State Water Supply and Pollution Control Commission with models to assist the development of an adequate program. EPA will continue to work closely with the State to prepare a submission that meets the requirements of the Act.

Senator Humphrey

Question:

To what extent has EPA been encouraging local governments in the course of the permitting process, to anticipate the possibility of legislative changes which would affect the level of federal commitment to the construction grants program?

Answer:

The EPA, during the permit compliance process, has not been encouraging permittees to anticipate the availability of any future construction grants funds. The basis of EPA's January 1984 National Municipal Policy is that, in all cases, the municipality is responsible for compliance with permit limits. Under this Policy, all municipal permit holders in violation of permit effluent limits are being required to submit a Municipal Compliance Plan. This Plan must detail how the municipality will achieve compliance with the permit before July 1, 1988, regardless of the availability of Federal grant monies. The muncipality has the option of using Federal grant assistance if it will be available to meet this deadline. If not, then the municipality must proceed with facility construction using its own funding sources. In exceptional circumstances, EPA will consent to a compliance date past July 1, 1988, such as when a municipality is financially or physically unable to meet the compliance deadline. Under the Policy, such a schedule would be embodied in a judicial consent decree. However, the absence of federal grant assistance alone does not qualify as an exceptional circumstance for the purposes of extending a compliance schedule past the compliance deadline. Guidance and assistance on financial planning and treatment options is being made available to municipalities.

Senator Humphrey

Question: Section 119 of S.53 permits the Town of Hampton, New Hampshire to continue to use its ad valorem tax user charge system for collecting the cost for the operation and maintenance of its sewer treatment works. In 1977, Congress sought to provide greater flexibility to communities by allowing them to use ad valorem taxes to pay the costs of operation and maintenance. A technicality led to the problem which Hampton is now facing, and it is my understanding that at least one other community in my State may be encountering a similar problem. What administrative action can be taken to eliminate this "catch-22?"

Answer: In order for the Town of Hampton or any other New Hampshire community in the same circumstances to collect its user charges through an ad valorem tax system, the Clean Water Act must be amended to specifically allow such procedures. When the town of Hampton received its construction grant, P.L. 92-500 did not allow the use of an ad valorem tax system for the collection of user charges. The adoption of P.L. 95-217 allowed the use of ad valorem systems, but it restricted the systems' use to grantees without approved actual use systems. Therefore, the Town of Hampton must comply with the conditions of its P.L. 92-500 grant to implement its approved user charge system for funding the O,M&R costs of wastewater treatment.

Senator Humphrey

Question: Based on the Agency's experience and analysis, what is your assessment of the ability of local governments to finance wastewater treatment needs so that they will be in compliance with the goals of the Act, particularly in relation to other infrastructure priorities?

Answer: Most communities which carefully select and build the most appropriate, simple technologies with low operation and maintenance costs should be able to meet the requirements of the Clean Water Act even with little or no outside financing assistance. The ability of small communities may be more in question especially if these communities require new collection system. Particularly communities under 3,500 in population can expect to see their present "medium to strong" financial condition affected. This cost pressure can be mitigated by greater emphasis on alternative technologies including cluster systems, lagoons, sand filters, and some types of land treatment.

Where there is a financial capability problem, the Agency suggests two main approaches. The first approach would involve requiring affordable increases in user charge fees now so that an adequate capital base can be generated for construction in the near future. The second approach would be to require a staged construction project where the municipality constructs a useable portion of a treatment system which they can afford now and completes additional components as financing becomes feasible.

Dedicated user fees provide the principal source of revenue for funding local operations, maintenance and capital expenditures. We have not analyzed the affect of these fees on the funding of other local infrastructure requirements.

Senator Symms:

Question: What studies has EPA conducted, or would it suggest, on the accelerated eutrophication problem at Lake Pend Oreille, Idaho?

Answer: The Lake Pend Oreille/Clark Fork drainage system extends into parts of Idaho, Montana, Washington and Canada. The potential for increased eutrophication in this system is a recognized concern in the area. Also the potential for interstate transport of pollutants is a highly visible issue to the local governments in the surrounding areas.

EPA Regions 8 and 10 are represented on a Task Force, which the Governor of Montana has created to conduct studies on the lake using private funding sources. University studies of organism tolerances to various pollutants are being conducted through this Task Force. The States of Idaho and Montana are also conducting limited field water quality studies using §205(j) funds.

Although the current studies can form the basis for additional work, they will not investigate all aspects of the problem. Additional activities that might be undertaken to investigate and correct pollution problems on this lake include:

- Investigate inputs from point sources
- Quantify inputs of toxic metals and other pollutants of concern
- Identify nonpoint source runoff problems from upstream agriculture and silviculture activities
- Characterize the eutrophic state of the lake
- Establish total maximum daily loads (TMDLs) for pollutants of concern to prevent further eutrophication
- Establish management plans for upstream nonpoint sources.

Interstate cooperation on a long term approach will be essential to prevent or reverse eutrophication of the Lake Pend Oreille system.

Senator Bentsen

Question: List those classes and categories of discharges, with the number of sources covered, for which general permits have been proposed or promulgated by EPA?

Answer: General permits have been proposed or promulgated by EPA for the following classes or categories:

		Approximate Sources Covered	
		Currently Proposed	Final Effective Permits
1.	Coal mines	--	2,300
2.	Oil & gas	4,000	3,450
3.	Animal feedlots	--	416
4.	Non-contact cooling water	--	200
5.	Construction activities	50	200
6.	Uncontaminated storm water	1,000	200
7.	Deep seabed mining	--	4
8.	Hydrostatic testing	--	3,000
9.	Navy weapons training	--	200
10.	Petroleum storage and transfer	--	500
11.	Seafood processors	--	75

Senator Mitchell

Question: Please provide an assessment of H.R. 8's turn-key provision.

Answer: Under the proposed legislation on "turn-key" construction in H.R. 8, projects costing $8 million or less could be designed and constructed on a simultaneous basis without prior approval of plans and specifications. Currently, prior approval is required under the Clean Water Act. This "turn-key" contractual arrangement requires a high degree of management and technical capability on the part of the municipality because the checks and balances provided by separate engineering and construction contracts are lost when both services are provided under a "turn key" contract.

Senator Mitchell

Question: What technical advice would EPA have on improving coordination of the Act's clean lakes and nonpoint source pollution control programs?

Answer: As a starting point, there should be an updated, current ranking of all lakes needing control in a given State to set priorities for implementation in current and future years. Where appropriate, existing lake classification studies could be used, supplemented as needed with new evaluations to assure coverage of all important public lakes in the State.

Next, before implementing a restoration program for any specific lake, there should be a well-designed, State-certified implementation plan which provides control for all contributing point and nonpoint sources at levels adequate to maintain desired water quality, coupled with in-lake restoration, if any, initially needed to achieve that water quality. There must be adequate assurances that point and nonpoint source controls are being implemented and will be maintained before proceeding with in-lake restoration (otherwise, inlake restoration will be short-lived).

Given the nature of NPS, it is also important that other relevant Federal, State and local programs be integrated into the lake restoration and protection program. For example, various USDA programs providing technical and cost-share assistance to farmers should be utilized in the lake watershed to assure application of BMP's needed to protect the lake. Mechanisms need to be in place to assure consistency among such Federal, State and local programs in the watershed.

Finally, NPS programs need to address waterbodies other than lakes. Thus, there should not be a separate NPS program for lakes, but rather a clean lakes program which utilizes and complements the States overall nonpoint source control program.

Senator Mitchell

Question: How would EPA propose to manage its administrative civil penalty provision, if enacted?

Answer: EPA would manage its civil penalty provision by integrating that enforcement tool into its overall enforcement program. Selection of administrative enforcement would depend on the type of case involved. The kinds of cases for which administrative penalties might be sought are described in the answer to a later question. EPA has extensive experience with administrative civil penalty litigation under such statutes as the Toxic Substances Control Act (TSCA) and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Administrative penalty proceedings under those acts and others are governed by the Agency's Consolidated Rules of Practice, 40 C.F.R. Part 22. Those Consolidated Rules provide for formal penalty hearings on the record with a right of court appeal.

In drafting the administrative penalty provision in the Administration bill, however, EPA concluded that formal penalty hearings would be unnecessarily expensive and time consuming for all parties for many of the violations involved. Our proposal, therefore, permits EPA to simplify and streamline penalty procedures while preserving the central rights accorded by the Consolidated Rules. For example, under the bill, an administrative penalty can be assessed only after (1) prior written notice of the proposed penalty, (2) right to a hearing, at which there must be an opportunity to be heard and to present evidence, and (3) completion of the hearing which will form the basis for the order "made on the administrative record." The Agency's penalty assessment may be appealed to an appropriate United States district court where there would be review of the administrative record. The Agency's penalty order would be set aside if there were not substantial evidence to support the finding of a violation or if the penalty assessment constituted an abuse of discretion.

The administrative penalty system proposed by the bill should provide ample procedural safeguards for litigants, particularly since the kinds of administrative cases envisioned are not expected to be factually complex. In fact, many of the administrative penalty actions would be based on simple discharge monitoring reports prepared and submitted to the Agency by the permittees themselves.

The Agency would develop and issue procedural regulations for use of administrative penalty authority. The regulations would be designed to maximize the efficient use of enforcement resources and minimize costs for all concerned, while still ensuring fundamental fairness. National consistency would also be achieved through establishment of a policy for developing administrative penalty amounts, such as the policy which is now under development for civil referrals to address Clean Water Act violations. The Agency believes that the above procedures amply protect the rights of permittees against whom administrative penalties might be proposed. An appropriate mix of judicial enforcement, administrative orders and administrative penalty actions should achieve greater compliance with the Clean Water Act.

Senator Mitchell

Question: List any specific types of violations for which administrative assessment of civil penalties might be more appropriate than judicial assessment.

Answer: A feature of the Clean Water Act is that it requires regular filings of discharge monitoring reports and other reports by permittees with the Agency. It is anticipated that many administrative penalty actions would be based on data prepared by permittees as submitted in self-monitoring reports. Accordingly, the facts in the administrative penalty actions would often be undisputed.

Situations where injunctive relief with court oversight is not considered necessary to achieve further compliance, would be particularly appropriate for use of administrative penalties. Similarly, use of administrative penalties might be employed to obtain compliance from permittees refusing to comply with Section 308 data requests or refusing to submit pretreatment plans or other periodic reports required by the Clean Water Act. Failure to comply with new program requirements, such as those involving sludge, might properly be addressed initially by an administrative penalty action if violations are clearly identifiable and straightforward. Another example of an appropriate administrative penalty proceeding would be a "penalty only" action where compliance has been achieved but the violator has obtained an economic benefit from non-compliance. A major reason for administrative penalties is to deprive a violator of any economic advantage from non-compliance, where such non-compliance is not continuing so as to require court-ordered injunctive relief.

Administrative penalty actions would be considered when a remedy stronger than an administrative order is deemed necessary to obtain compliance. However, administrative penalty actions would not be instituted when court injunctive relief or specific performance is believed to be necessary to stop ongoing conduct which violates the Clean Water Act.

Question: Who in EPA would have the authority to assess administrative civil penalties?

Answer: We expect that the assessing official would be the Administrator or Regional Administrator, although there would also be a neutral hearing officer who would be involved in hearing evidence, making a recommendation, and making a tentative assessment subject to review by the Administrator or the Regional Administrator. Of course, the assessment by the hearing officer would become final if there were no appeal of the assessment to the Administrator or to the Regional Administrator. The precise framework would be established by regulation once the penalty authority is enacted into law. There would also be a right of further appeal to the U.S. District Court.